TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1927

No. [redacted] 68

CITY OF HAMMOND, PETITIONER,

vs.

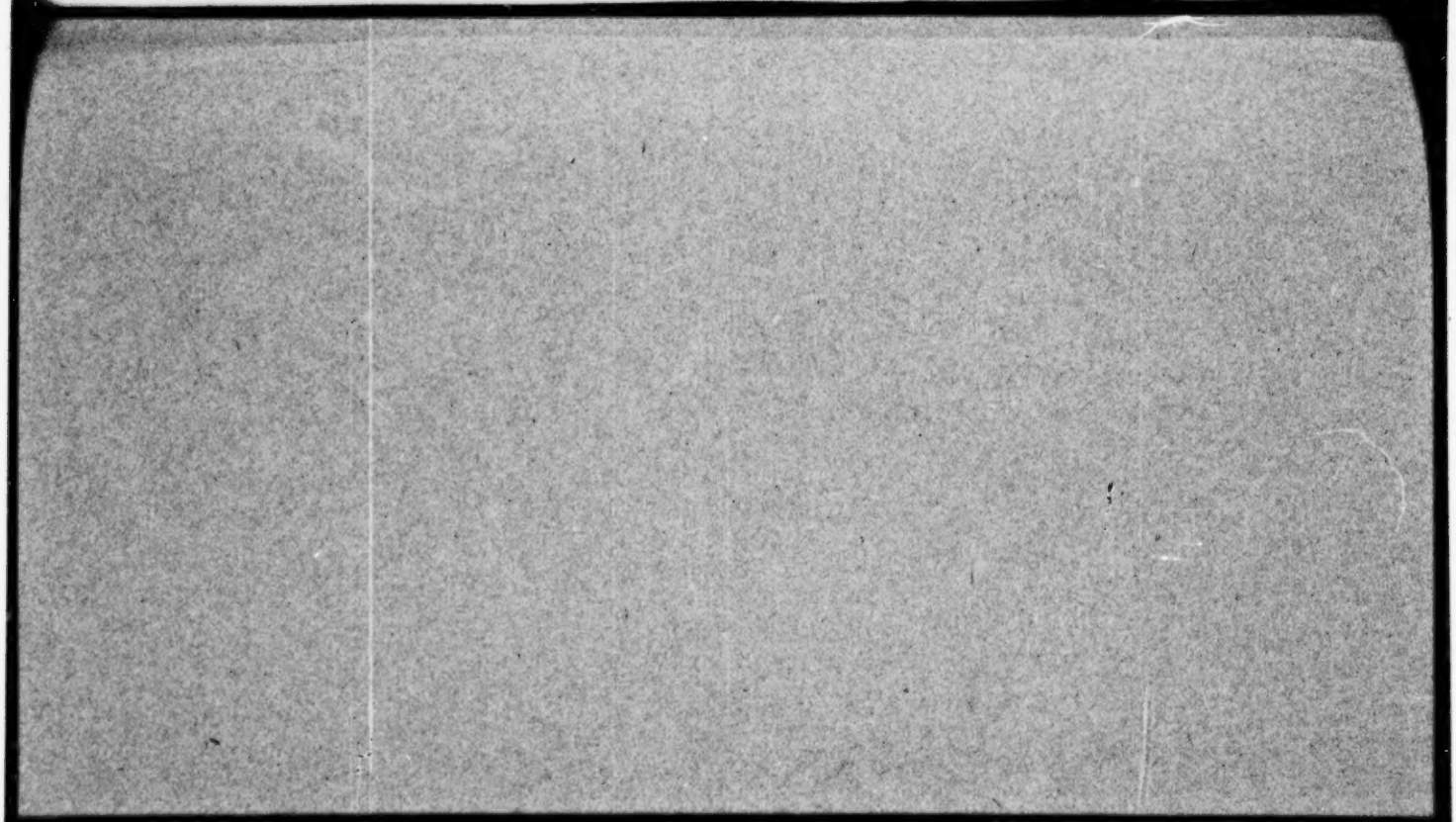
FARINA BUS LINE AND TRANSPORTATION COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 31, 1928

CERTIORARI GRANTED OCTOBER 11, 1928

(31,952)



(31,952)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. 386

CITY OF HAMMOND, PETITIONER,

vs.

FARINA BUS LINE AND TRANSPORTATION COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

INDEX

	Page
Record from the district court of the United States, district of Indiana	1
Caption	1
Bill of complaint	1
Minute entry of order granting temporary restraining order	8
Summons and marshal's return	9
Motion to dismiss	11
Answer	12
Statement of evidence	15
Plaintiff's Exhibit 1—Affidavit of Charles W. Gifford	15
Testimony of Charles W. Gifford	20
Plaintiff's Exhibit No. 2—Ordinance No. 1897	29
No. 3—Ordinance No. 1898	44
No. 4—Ordinance No. 1945	46
No. 5—Map showing motor bus route	49
No. 6—Supplemental affidavit of Charles W. Gifford	51

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 31, 1926

Page

Defendant's Exhibit A—Affidavit of John V. Keeler and Fred Dietrich 54

Map showing streets upon which motor busses are forbidden to operate and those on which they may operate, etc 62

Judge's certificate to statement of evidence .....

Waiver of provisions of equity rule No. 75 65

Decree 66

Assignments of error 66

Order allowing appeal 72

Bond on appeal 73

Præcipe for transcript of record 75

Clerk's certificate 76

Proceedings in United States circuit court of appeals, seventh circuit. 77

Clerk's certificate 77

Order extending time 81

Argument and submission 82

Opinion, Page, J 83

Judgment 84

Clerk's certificate 85

Order allowing certiorari 86

2 Pleas of the District Court of the United States at a Special April Term begun and holden at the United States Court House in the city of Hammond, in said District, on the third Tuesday of April, 1925, before the Honorable Thomas W. Slick, Judge of said District Court. Filed 192

Farina Bus Line and Transportation Company, a corporation, *Plaintiff*
vs
City of Hammond, Lake County, Indiana, a municipal corporation, *Defendant*
No. 26
In Equity

Be It Remembered That heretofore, to-wit, on the 12th day of June, A. D. 1925, before the Honorable Thomas W. Slick Judge of said court, the following proceedings in the above entitled cause were had, to-wit:

Comes now the plaintiff and files its complaint herein which complaint omitting formal parts, is in the following words and figures, to-wit:

Plaintiff complains of the defendant and for cause of action alleges that it, the plaintiff, is a corporation organized and existing under and by virtue of the laws of the State of Illinois and that as such corporation the plaintiff is a resident and citizen of the state of Illinois. That the defendant is a municipal corporation existing under and by virtue of
3 the laws of the State of Indiana, and is exercising the functions of a municipal corporation pursuant to said laws, and that it exists only in and within the State of Indiana, as such municipal corporation, and not otherwise. That the amount in controversy herein, exceeds the sum of Three Thousand ($3000.00) Dollars, exclusive of interest and costs.

Plaintiff further alleges that it is engaged in the business of a common carrier; that it owns and operates a motor bus line between various towns and cities in the State of Illinois, and the defendant city of Hammond, Indiana; that between said points it carries passengers for hire, and that it has been engaged in such business for more than two years last past and is now so engaged. That this plaintiff in the conducting of its business aforesaid, owns all of said motor busses, and in

the operation thereof, has arranged a definite schedule over public highways in the defendant city and the State of Illinois. That the defendant city is located on the state line dividing the states of Illinois and Indiana, and is a city of a population of approximately sixty thousand. That is has a large business district and also has large retail stores. That plaintiff's bus line operates between small towns and cities in the State of Illinois, and carries its passengers to the defendant city, which passengers so carried, are desirous of trading and shopping in the business district of said defendant; that all of said motor busses used by the plaintiff in its business, are of an approved type, sufficiently large to carry twenty passengers; that plaintiff has procured all
4 motor bus, automobile and vehicle licenses required by the states of Illinois and Indiana, for each bus that it operates; that plaintiff is ready, willing and able to comply with all lawful and valid regulations regarding the operation of its motor busses in the State of Indiana and the State of Illinois; that plaintiff's employes in charge of said busses are all competent and efficient licensed chauffeurs under the law governing; that plaintiff has, through the operation of said transportation system, developed a profitable business and built up a substantial good will among people who travel in localities where plaintiff's busses operate. That plaintiff now has an investment in its business aforesaid, in excess of $15,000.00. That from the cities and towns in Illinois, to the defendant city in Indiana, plaintiff's bus system is the only means of transportation, and plaintiff hauls from such outlying cities and towns, many people who desire to trade and shop in the defendant city; that in conducting its business aforesaid, the motor busses of the plaintiff operate upon a definite schedule to and from the defendant city and the outlying cities and towns as aforesaid, which schedule is so maintained for the convenience of its patrons and the traveling public generally.

Plaintiff further says that on the 23rd day of May, 1925, the defendant through its Common Council, duly passed an ordinance regulating and routing certain vehicles for hire and prohibiting their use of certain streets within the defendant city; that said ordinance was numbered 1945 and that an exact copy of the same is attached to this com-
5 plaint and made a part hereof, marked Plaintiff's Exhibit "A". That said ordinance was duly approved by the Mayor of the defendant city, on the 23rd day of May, and

thereafter filed in the office of the City Clerk of said city, and thereafter due publication of said ordinance, because of its penal provisions, was had as by law required, and the same is now in full force and effect.

Plaintiff further alleges and says that by the terms of said ordinance, the plaintiff is deprived of the use of certain streets in said defendant city, said streets being set out and named in Section one of said ordinance; that the streets and parts of streets so set out in section one of said ordinance, are the streets in the main business section of said city, and are in that section to which most of the passengers hauled by the plaintiff, seek to go. Plaintiff further says that it cannot operate upon certain other of said streets in the defendant city, without permission from the Board of Public Works of said defendant city, as specified in Section Two of said ordinance; that all streets and parts of streets so specified in section two of said ordinance, are streets leading to the main business section of the defendant city; that heretofore, plaintiff in its business has traversed the streets named in section one and section two of said ordinance, without hindrance, and it has been necessary in the conducting of said business, to traverse such streets.

Plaintiff further says that the passage and enforcement of said ordinance will greatly damage and destroy the busi-
6 ness of this plaintiff; that if said ordinance is enforced, this plaintiff will not be able to operate its bus line so as to give service to its patrons. That under said ordinance, it cannot enter the business section of said city, wither for taking on or discharging passengers; that most of the passengers that it carries, are desirous of entering the business district and trading and shopping in the stores located in said district in said defendant city; that by reason of the aforesaid fact, passengers that it is now, and has been heretofore carrying will no longer ride in its busess; that its service will be disrupted and its business completely destroyed. That through said ordinance and the enforcement thereof, the investment that the plaintiff now has in said transportation system, exceeding $15,000.00 will be entirely lost to it, and its good will destroyed. That plaintiff's business demands uniform and constant operation at regular intervals and over convenient highways; that in the conducting of its business aforesaid, it is necessary to operate over and along the streets specified in sections one and two of said ordinance; that the injury and damage that will be suffered by the plain-

tiff is irresparable and cannot be compensated in money damages.

Plaintiff further alleges and says that said ordinance is unconstitutional and void, in this, that said ordinance violates section twenty-three of the Constitution of the State of Indiana; that said ordinance is further void and unconstitutional in this, that it violates the Fourteenth Amend-
7 ment of the Constitution of the United States, in that it denies to this plaintiff the equal protection of the laws. That said ordinance is further unconstitutional and void, in that it unreasonably, arbitrarily and unlawfully discriminates against the plaintiff; that by the terms of said ordinance any bus line having a franchise contract with said city, is expected from the terms thereof and is allowed to operate over all streets in said defendant city, including the prohibited area set out in section one thereof, and to operate over other streets specified in section two of said ordinance, without a permit from the said Board of Public Works; that the Calumet Motor Coach Company, a corporation, is engaged in the transportation of passengers for hire by motor busses, and is the only person having such franchise contract with the defendant, and not subject therefore, to the terms of said ordinance. Plaintiff further avers that said Calumet Motor Coach Company operates in the cities of Hammond and East Chicago, Indiana, and the city of Chicago, Illinois, but does not operate in and to the cities and towns in Illinois served by this plaintiff.

Plaintiff further says that the highways over which it operates, including the streets and parts of streets in the defendant city mentioned in said ordinance, are not unduly congested, but they are so constructed that they can reasonably and without damage, carry heavier burdens than those imposed upon them by plaintiff's motor busses; that no heavier or different burdens are imposed upon the streets and highways named in said ordinance than is imposed
8 by the operation of other motor vehicles of the same kind and character, operated by this plaintiff, and by others engaged in the business similar to the business of the plaintiff, including the business of said Calumet Motor Coach Company, excepted by the terms of said ordinance, aforesaid. That the motor busses of this plaintiff will impose no greater burdens on said streets and highways nor congest traffic to any greater extent, than automobiles and busses owned by private individuals which are now permitted by the terms of

said ordinance, to pass over said streets and highways. Plaintiff further avers that it maintains on private property abutting on Sibley Street each of Hohman Street in said defendant city, a waiting room for its patrons, and that it unloads and takes on passengers at said point; that said place is located within the prohibited area specified in section one of the ordinance aforesaid. Plaintiff avers that by reason of the aforesaid facts, said ordinance is void, in that it unlawfully and unreasonably discriminates against this plaintiff and its business; that said ordinance is aimed to destroy the business of the plaintiff, to render its investment worthless, and to destroy competition, solely to the interest of said Calumet Motor Coach Company, excepted by the terms of said ordinance.

Plaintiff further alleges that said ordinance is unconstitutional and void in that it delegates to the Board of Public Works of the defendant the right to issue, or to refuse to issue, a permit to this plaintiff and to others similarly
9 situated, at its pleasure; that said ordinance contains no standard by which said defendant city can judge whether or not a permit should be issued; that the delegation of power contained in section two of said ordinance is unconstitutional and void, and discriminates against the plaintiff and its property.

Plaintiff further alleges and says that after the adoption of said ordinance, it did apply to the Board of Public Works of the defendant for a permit to operate over and upon certain streets of the defendant city, jurisdiction over which was vested, by the terms of said ordinance, in the Board of Public Works. That said application has been on file for more than two weeks without any action being taken by said defendant, or its Board of Public Works, and that on the 12th day of June, 1925, in the afternoon thereof, said defendant refused to issue said permit and refused to permit this plaintiff to operate upon said streets; that by such refusal of the defendant city to permit its operation, the plaintiff cannot enter the business portion of said defendant city and cannot have its busses drive to and leave the waiting station aforesaid; that it will be compelled, unless the defendant is restrained from enforcing said ordinance, to discontinue its service, thereby being deprives of its property and the good will of its business that it has heretofore established; that said defendant through its officers and agents, is now threatening to stop this plaintiff from operating its busses over and upon the

streets described in said ordinance; that said defendant is threatening to arrest the employes of this plaintiff who oper-
said busses, and to otherwise harass this plaintiff.
10 Plaintiff further avers that it has no plain, adequate
or speedy remedy at law; that money damages cannot compensate the plaintiff; that its damages cannot be ascertained in terms of money value; that unless an injunction issue out of this court, restraining said defendant and all of its officers servants and agents from enforcing said ordinance and the terms thereof against this plaintiff, this plaintiff will be deprived of its rights as a citizen of the United States and will be deprived of rights as guaranteed to it by the State of Indiana.

Plaintiff further alleges that by reason of the threatened enforcement of said ordinance against it, which threatened enforcement is to occur immediately, it is impossible to serve said defendant with any notice of hearing for an injunction, as herein prayed. That time is of the essence, and that it is necessary, to preserve the rights and property of this plaintiff, to issue a temporary restraining order without notice, restraining said defendant and all its officers, servants and agents from enforcing said ordinance.

Wherefore, plaintiff prays judgment and asks that this court decree that the defendant and all of its officers, servants and agents be perpetually enjoined from enforcing Ordinance No. 1945 passed by the defendant city and set out at length herein, as against this plaintiff, and that a temporary restraining order issue without notice, restraining said defendant and all of its officers, servants and agents from enforcing the terms of said ordinance against this plaintiff, and that
said defendant and all of its officers, servants and agents
11 be restrained from arresting, imprisoning, confining and
prosecuting this plaintiff or any of its agents, servants or employes, for any alleged violation or infringement of the ordinance aforesaid, and plaintiff prays for all other further and proper relief in the premises.

(signed) CRUMPACKER & FRIEDRICH,
Attorneys for Plaintiff.

State of Indiana }
County of Lake } ss.

CHARLES W. CHASE, being first duly sworn, upon his oath says that he is President of the Farina Bus Line and Transportation Company, a corporation, the plaintiff in this action; that he is personally familiar with the facts stated in the foregoing complaint, and that said facts so stated, are true.

And further affiant sayeth not.

(signed) CHARLES W. CHASE.

Subscribed and sworn to before me the 12th day of June, A. D. 1925.

(signed) MOLLIE KRIEGER,
(Seal) *Notary Public.*

My commission expires November 5, 1925.

(Exhibit "A" attached to the complaint, being identical with Ordinance No. 1945 appearing as Plaintiff's Exhibit 4 in the statement of the evidence at page 68 of this record, is therefore omitted from this part of the record.)

12-a And Be It Further Remembered that afterwards, to-wit: At the said Special April Term of said court, on the 12th day of June, A. D. 1925, before the Honorable Thomas W. Slick, Judge of the United States District Court for the District of Indiana, the following proceedings were had, to-wit:

Filed June 12 1925.

Farina Bus Line and Transportation Company, a corporation, *Plaintiff*, *vs.* City of Hammond, Lake County, Indiana, a municipal corporation, *Defendant.* } No. 26 In Equity

Comes now the plaintiff and files its verified application for a temporary restraining order without notice, restraining the defendant and all of its officers, servants and agents from enforcing Ordinance No. 1945, passed by the defendant on the 23rd day of May, 1925, as set out at length in the complaint filed in this cause;

And the plaintiff now tenders its injunction bond in the penal sum of One Thousand ($1,000.00) Dollars, signed by the United States Fidelity & Guaranty Company as surety, conditioned as provided by law;

And the court having examined the verified petition and being duly advised in the premises, does now grant the plaintiff's motion for a temporary restraining order; and the court having approved said injunction bond, It Is Now Ordered that the defendant and all its officers, servants and agents be temporarily restrained and enjoined from enforcing said Ordinance No. 1945 adopted by the Common Council of the City of Hammond, Lake County, Indiana, May 23rd, 1925, and from making any arrests or entering upon any acts in the enforcement of said ordinance or under color of the same.

12-b

And the court now fixes the 15th day of June, A. D. 1925, at two o'clock P. M., on said day, in the Federal Building in the City of Hammond, Lake County, Indiana, as the time for a hearing on the question as to whether said temporary restraining order shall or shall not be made a temporary injunction, and directs that the defendant be notified accordingly.

Done at the city of South Bend, in said District, the 12th day of June, A. D. 1925.

(signed) Thos. W. Slick,
Judge of the United States District Court.

And Be It Further Remembered that afterwards, to-wit: Issued 1925.
At the said Special April Term of said court, on the 12th day of June, A. D. 1925, before the Honourable Thomas W. Slick, Judge of the United States District Court for the District of Indiana, the following proceedings were had, to-wit:

Summons was issued to the Marshal of the District of Indiana, which summons is in the following words, to-wit:

12-c UNITED STATES OF AMERICA,

District of Indiana.

The President of the United States of America, to the Marshal of the District of Indiana—Greeting:

You are hereby commanded to summon City of Hammond, a municipal corporation, if it be found in your District, to be and appear in the District Court of the United States, for the District of Indiana, aforesaid, at Hammond, on the 3rd day of July, next, to answer a certain complaint for injunction filed and exhibited in said Court against it, by Farina Bus Line and Transportation Company, a corporation, Hereof it is not to fail, under the penalty of the Law thence ensuing.

And have you then and there this writ.

Witness, the Honorable Thomas W. Slick, Judge of said Court, and the seal thereof, this 12th day of June, A. D. 1925.

WILLIAM P. KAPPES,
Clerk.

(Seal)

(signed) By MAUDE B. SWANK,
Deputy Clerk.

Memorandum

The said defendant is required to file answer or other defense in this suit in the Clerk's office of said Court on or before the twentieth day after service, excluding the day thereof; otherwise the said Bill may be taken pro confesso.

WILLIAM P. KAPPES,
Clerk.

(signed) By MAUDE B. SWANK,
Deputy Clerk.

Be It Further Remembered that afterwards, to-wit: on the 13th day of June, A. D. 1925, the following proceedings were had in said cause:

13 Thereupon the Marshal returned said Writ with his return endorsed thereon, which return is in the following words and figures, to-wit:

District of Indiana

I received this Writ at Hammond, in said District, at ..... o'clock ..... M., on the 13th day of June, A. D. 1925, and served the same in Lake County, as follows: 13th day of June, 1925, by copy upon the within named City of Hammond, a municipal corporation, by reading the same to and within the hearing of, and by delivering a true copy of this writ to Daniel Brown, Mayor of said City of Hammond, at Hammond, Lake County, Indiana, June 13, 1925, he being the highest representative of said corporation found in my district; and also delivered to said Daniel Brown copy of temporary restraining order.

L. P. MEREDITH,
U. S. Marshal.
(signed) By ELLIS B. CROSS,
Deputy.

Marshal's Costs:

1 Service of Spa	$2.00
1 Serv Order	2.00
	$4.00

Filed Jun 20, 1925. William P. Kappes, Clerk.

And Be It Further Remembered that afterwards, to-wit: At the said Special April Term of said court, on the 26th day of June, A. D. 1925, before the Honourable Thomas W. Slick Judge of the United States District Court for the District of Indiana, the following proceedings were had, to-wit:

Filed [illegible] 1925.

Farina Bus Line and Transportation Company, a corporation,
Plaintiff,
vs.
City of Hammond, Lake County, Indiana, a municipal corporation,
Defendant.
No. 26
In Equity

14 Comes now the defendant by McMahon & Conroy, its attorneys, and files its motion to dismiss the above entitled cause of action, which motion, omitting formal parts, is in the words following, to-wit:

Now comes the defendant, City of Hammond, and moves the Court to dismiss this action and that it take its costs in this suit incurred, for the following reason, to-wit:

I.

There is insufficiency of fact to constitute a valid cause of action in equity against this defendant.

(signed) William C. McMahon,
(signed) Joseph H. Conroy,
(signed) L. L. Bomberger,
Solicitors for Defendant.

Be It Further Remembered that thereafter, to-wit: At the July Term of said Court, on the 10th day of July, A. D. 1925, before the Honourable Thomas W. Slick, Judge of the United States District Court for the District of Indiana, the following proceedings were had, to-wit:

July 10. Farina Bus Line and Transportation Company, a corporation, *Plaintiff*, *vs.* City of Hammond, Lake County, Indiana, a municipal corporation, *Defendant.* } No. 26 In Equity

Come now the parties, appearing by counsel, and the motion of the defendant to dismiss the complaint, is overruled to which ruling the defendant excepts. Thereupon the defendant files answer, which answer, omitting formal parts, is in the following words and figures, to-wit:

The defendant City of Hammond for answer to the Bill of Complaint herein, admits that the plaintiff is a corporation organized under the laws of the State of Illinois, and is a resident and citizen of said State; that the defendant is a municipal corporation of the State of Indiana.

Defendant is not informed as to the amount in controversy.

Defendant admits the allegation of said Bill that plaintiff is engaged in the business of carrying passengers for hire between various cities in the State of Illinois, and the defendant City, and has been such for more than two (2) years last past, and that operation is under a schedule.

Defendant admits the allegation that it is a city of approximately 60,000 people and that it has a large business district and large retail stores; that plaintiff carries passengers from the State of Illinois to said City that they may trade in the business district thereof.

Defendant admits the allegation as to the character and size of the motor busses used by plaintiff.

As to whether plaintiff has procured all motor bus, automobile and vehicle licenses required by the states of Illinois and Indiana, the defendant is not informed.

As to the competency and efficiency of plaintiff's employes or chauffeurs, defendant is not informed.

16 As to the allegation that plaintiff has developed a profitable business and built up a substantial good will defendant is not informed, neither is it informed as to the value of plaintiff's investment in said business.

As to the allegation that plaintiff's bus system is the only means of transportation from the cities and towns in Illinois

to the defendant city, defendant is not informed and further answers that said allegation is uncertain and indefinite.

Defendant admits the passage and validity of its Ordinance No. 1945, as alleged in said complaint, and shown in Exhibit "A" attached thereto.

Defendant denies that in order to conduct the business of carrying passengers from points in the State of Illinois to the business district of the City of Hammond, it is necessary to traverse the streets and parts of streets mentioned in Section 1 of said ordinance.

Defendant denies that the passage and enforcement of said ordinance will either damage or destroy the business of the plaintiff, and that plaintiff will not be able, on account thereof, to operate its bus line so as to give service to its patrons. Defendant denies the allegation that under said ordinance plaintiff cannot enter the business section of the defendant city, either for taking up or discharging passengers, but on the contrary, alleges the fact to be that there is no restriction against moving over and upon the streets or parts of streets not mentioned in Section 1 of said ordinance, and
17 that while said streets and parts of streets mentioned in Section 1 are the most congested in the business district of said city, there are other available and convenient streets for passing into and through said district, and defendant denies that the enforcement of said ordinance will disrupt and destroy the business and good will of the plaintiff. Defendant denies that in order to conduct its business plaintiff must necessarily operate over and along the streets specified in Section 1 of said ordinance, or in Section 2 thereof.

Defendant denies the allegation of said Bill that the streets and parts of streets mentioned in said ordinance are not unduly congested, but alleges the fact to be that they are greatly and exceedingly congested, especially those parts of streets mentioned in Section 1 of said ordinance.

Defendant admits the allegation that plaintiff has a waiting room on Sibley Street about 100 feet each of Hohman Street in said city, and that said part of Sibley Street is within the prohibited area specified in Section 1 of said ordinance, but defendant says that to receive and discharge passengers at or by reason of said waiting room, plaintiff has been stopping its motor busses in the street opposite said waiting room, and receiving and discharging passengers in the street, and not on private property.

Defendant denies that plaintiff ever applied to the Board

of Public Works of the defendant city for a permit to stop to receive or discharge passengers upon any street or part of street, which, by the terms of Section 2 of said ordinance,
said Board of Public Works is authorized to permit.
18 Defendant admits that on the 12th day of June, 1925,
the said Board of Works refused to issue a permit as requested by the plaintiff, for the reason that such request called for streets and parts of streets not within the jurisdiction of said Board to grant. Defendant admits that by the enforcement of said ordinance, plaintiff cannot drive its motor busses to and from the waiting room on Sibley Street aforesaid, but denies that it cannot enter the business portion of the defendant city under said ordinance.

Defendant admits that it has threatened to and will enforce said ordinance, and arrest the employes of plaintiff who violate the same.

For a second, distinct and separate defense to said Bill of Complaint, defendant says that on said 12th day of June, 1925, the Board of Works of said City tendered to the plaintiff a permit to operate its said busses by stopping the same to receive and discharge passengers on State Line Street from Standard Avenue to Rimbach Avenue, on Rimbach Avenue from State Line Street to Ann Street, on Ann Street from Rimbach Avenue to Russell Street, on Russell Street from Ann Street to State Line Street, by the use of which streets, plaintiff would be able to receive and discharge passengers within one block of the courthouse, and within from one to two blocks of the most important business houses and banks of said city; that plaintiff declined and refused to accept said permit.

Wherefore, defendant prays that said Bill be dismissed with costs.

(signed) William C. McMahon
(signed) Joseph H. Conroy
(signed) L. L. Bomberger
Solicitors for Defendant

32 Be it Further Remembered that afterwards, to-wit: At
the said July Term of said Court, on the 16th day of July, A. D. 1925, before the Honourable Thomas W. Slick, Judge of the United States District Court for the District of Indiana, the following proceedings were had, to-wit:

Farina Bus Line and Transportation Company
vs
City of Hammond
} In Equity No. 26

Comes now the plaintiff, by Crumpacker and Friedrich of counsel, and lodges its statement of the evidence in the Clerk's Office, for filing upon approval by the court, said statement being in the words following, to-wit:

33 STATEMENT OF THE EVIDENCE

(Plaintiff's Exhibit One)

Affidavit of Charles W. Gifford

United States of America
District of Indiana
} ss.

IN THE DISTRICT COURT OF THE UNITED STATES

For the District of Indiana

(Hammond Division)

Farina Bus Line and Transportation Company, a corporation
Plaintiff
vs
City of Hammond, Lake County, Indiana, a municipal corporation,
Defendant
} In Equity No. 26

Filed Jul 17 1925 William P. Kappes, Clerk.

CHARLES W. GIFFORD being first duly sworn, on oath says that he is Superintendent of the plaintiff in the above entitled cause and is familiar with the facts connected with its operation. That said company does now and has for four years past operated a line of automobile busses carrying passengers for hire from certain cities and towns in Illinois, namely, Chicago Heights, Glenwood, Homewood, Franklyn,

Thornton, Oak Glen and Lansing, into the State of Indiana, through the Town of Munster, Indiana, and through that town into the city of Hammond. That the Town of Munster and the City of Hammond lie along the state line between the
34 states of Indiana and Illinois. That the city of Hammond is contiguous to and immediately north of the town of Munster. Under the company's routing it comes into the town of Munster on an east and west street known as Ridge Road and turns north on a street in Munster known as Hohman Street which street extends to and through the city of Hammond. Under the company's operation as now and heretofore conducted it proceeds north on said Hohman Street to the business district of the city of Hammond. It maintains a depot and terminus on Sibley Street in said city of Hammond which is an east and west street intersecting said Hohman Street in the business district, said terminus and depot being one-half block east of Hohman Street on said Sibley Street. The company does not haul passengers between points in the city of Hammond, but brings into said city and to said terminus passengers from Illinois and the town of Munster. The company brings into the city of Hammond approximately six hundred (600) passengers per day, over five hundred (500) of which are brought from the towns above referred to in the state of Illinois through said Town of Munster. Its depot at the terminus on Sibley Street is not in the street, but is on private property which fronts and abuts on the street. There it maintains a waiting-room and ticket office. It operates four busses over its routes, on a schedule of about one hour each way during the day. It has invested in its busses over Thirty-two Thousand ($32,000.00) Dollars and supplies to the city of Hammond the only transportation by motor bus or otherwise between the towns above referred
35 to in Illinois and the city of Hammond.

Affiant further says that said company is operating in Illinois and up to the state line under a certificate of convenience and necessity, granted by the Public Service Commission of the State of Illinois,—nn all respects as authorized by law. It has also registered its busses in Illinois and Indiana as required by the laws of both states. Its chauffeurs are licensed and it has in al lother respects complied with the laws of both states respecting the licensing and regulation of motor bus traffic for hire.

Affiant further says that said company was lawfully operating its busses over fixed routes as above described upon

regular schedules upon Hohman Street and Sibley Street in the town of Munster and the city of Hammond for a period of ninety (90) days immediately prior to the taking effect of an act of the General Assembly approved March 4th, 1925, being Chapter 46 of the published laws of the year 1925, and has since been continuously engaged in such operation. That within thirty (30) days after said act was in effect the company filed and submitted to the Public Service Commission of the State of Indiana, its application for a certificate of convenience and necessity to continue its operation over said streets and highways of said state. That said application is still pending before said body and the company has done all it could do to acquire said certificate of convenience and necessity and to make its operation over the highways of the state and the streets if the city of Hammond, in all respects legal.

36 Affiant further says that Ordinance No. 1945 of the city of Hammond, adopted May 23rd, 1925, makes it unlawful for the Farina Company to stop any of its vehicles for the purpose of receiving or discharging its passengers upon any street, alley or public place within the city of Hammond, with the proviso that the Board of Works may for any period not exceeding six months or successions thereof permit such operation on certain streets named in said ordinance. That Hohman Street is not so named. Said street runs north and south through the town of Munster into the city of Hammond parallel to and one block east of the state line. That said street is the only street by which the company can get into the city of Hammond except by way of Calumet Avenue, a north and south street one mile east of Hohman, or Columbia Avenue, a north and south street one and one-half miles east of Hohman Street. Under said Ordinance No. 1945 the Board of Works is not authorized to grant a permit to any company to come in over Calumet Avenue and if the Farina Company came in over Columbia Avenue it would have to route its busses several miles out of the way and travel through a sparse and unprofitable district. Affiant further says that Hohman Street is well paved and is the main artery through the residence district of said city of Hammond and for a distance of three (3) miles from the south limits of said city to the business district is not congested and the operation of the plaintiff's busses over said three miles to the business district would not create conges-

tion or unsafe conditions to the public. Notwithstanding
37 these facts, Ordinance No. 1945 makes it impossible for the company to stop at any place on said street to take on or let off passengers and in effect makes impossible operation over said street.

Affiant further says that on the 25th day of May, 1925, the plaintiff company filed its written application with the Board of Public Works of the city of Hammond for a permit to operate over all the streets described in Section 2 of said ordinance. That after taking the matter under advisement said Board did on the 12th day of June, 1925, decline to grant said permit, but offered the company a permit for a period of thirty (30) days to stop its busses to take on and let off passengers for intercity business on the following streets: On Steta Line Street from the south city limits to Rimbach Avenue; on Rimbach Avenue from State Line Street to Ann Street; on Ann Street from Rimbach Avenue to Russell Street; on Russell Street from Ann Street to State Line Street.

Said permit so offered directed that the plaintiff's busses on entering the city at the south on Hohman Street should turn west on Standard Avenue to State Line Street and return by the same route. Under this offered permit the company was denied the opportunity to proceed to its depot and terminus on Sibley Street. It was required to operate on State Line Street which is poorly paved and out of the course of travel convenient to the company's passengers.

It was required to use as its terminal certain residence
38 streets in said city, namely, Rimbach Avenue, Ann Street and Russell Street, where it has and can obtain no depot with shelter and conveniences to its passengers. If the company used said location at Rimbach Avenue, Russell Street and Ann Street as its terminal, its passengers would be discharged several blocks away from its former terminus and depot and outside of the business district of the city.

Under the ordinance and said offered permit the company is permitted to run over Hohman Street from the south city limits of Hammond to Standard Avenue, a distance of approximately one and one-quarter miles and at Standard Avenue is required to turn west to State Line Street. It is not permitted to stop to take on or discharge passengers on Hohman Street from the south city limits to Standard Avenue, notwithstanding many of its passengers desire to alight or want to take passage on said street and in said district.

Said district is the growing residence district of the city of Hammond and under said ordinance and permit any passengers living on Hohman Street between the south city limits and Standard Avenue are required to proceed a distance of approximately two (2) miles to Rimbach Avenue and Ann Street to take one of the company's busses, returning over the same route, if the desire to go to Munster, or any of said towns in Illinois. Because of the strictures above referred to, it was and is impossible for the company to operate under said ordinance and offered permit without great financial loss to itself and inconvenience to the traveling public.

Affiant further says that upon his investigation and knowledge there is only one motor company operating
39 in said city of Hammond under what purports to be a contract to which said city is a party. That the company is the Calumet Motor Coach Company which entered into a contract to operate motor bus service over all the streets of said city on the 8th day of September, 1924. That said company operates the same type and size of bus as does the plaintiff company and contributes as much or more to the congestion of the business district of said city, than does this plaintiff company. Said Calumet Motor Coach Company is permited to operate its busses over all the streets restricted and prohibited in said Ordinance No. 1945 and to use the down-town business streets of said city as its terminal.

And further affiant sayeth not.

(signed) CHARLES W. GIFFORD

Subscribed and sworn to before me this 15th day of June, 1925.

(signed) MOLLIE KRIEGER
(Seal) *Notary Public*

My commission expire November 5, 1925.

86 IN THE DISTRICT COURT OF THE UNITED STATES

District of Indiana

Farina Transportation Co.
—*vs*—
City of Hammond
} No. 26 In Equity

TESTIMONY OF CHARLES W. GIFFORD GIVEN ON THE 15TH DAY OF JUNE, 1925

87 CHARLES W. GIFFORD called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examiantion by Mr. Crumpacker.

Q. Will you state your name?
A. My name is Charles Walter Gifford.
Q. Where do you live?
A. Gary, Indiana.
Q. What connection, if any, do you have with the Farina Bus line, the plaintiff in this case?
A. Superintendent.
Q. I will ask you to state if this map, Plaintiff's Exhibit 5, is an accurate map of the City of Hammond and surrounding territory?
A. I believe that it is.
Q. Showing the principal streets and the boundaries of the City of Hammond and the surrounding towns.
A. Yes, sir.
Q. And showing the streets over which the plaintiff company has operated from Illinois into Hammond, the State of Indiana.
A. Yes, sir.
Q. I will ask you to state what there is on this map, Exhibit 5, indicating the route on which the plaintiff is now operating in the City of Hammond.
A. I have traced in pencil our route from Chicago to Chicago Heights, in so far as is practical on this map,
88 down Ridge Road to the junction of Ridge Road and Hohman Street, and in on Hohman Street to the junction

of Hohman and Sibley Streets, when we turn easterly to what is known as the store of George Dixon, where we maintain a waiting room and ticket depot for our patrons.

Q. The waiting room and ticket depot is how far east from Hohman Street?

A. Approximately a half a block, I should judge.

Q. You may state what indicates it on this map.

A. I have indicated the station by a black dot.

Q. Do you know where the south city limits of Hammond is where Hohman Street crosses it?

A. I believe the dividing line is the Little Calumet River.

Q. That divides Hammond from Munster?

A. Yes, sir.

Q. I will ask you to state whether the operation or the routing of your buses, as indicated by this line here, when you cross the boundary line between Hammond and Munster, whether or not from there on down to your depot that route is the most direct route to your depot?

Mr. Peters: I object. I think the map speaks for itself. That is a direct route.

Mr. Crumpacker: I want to show that it is the most direct route. There is no other street from the boundary line down to Sibley that is as direct as Hohman Street is.
89 In fact, there is no other street from Munster on in at all. The only other one is Calumet Avenue, one mile to the east, which, of course, would not be as near and direct.

The Court: Let him answer the question. Is it the most direct?

A. I know it is the most direct route into our depot in the City of Hammond.

Q. This waiting room and depot on Sibley street, that you refer to, is that east or west of the Monon tracks in Hammond?

A. It is west of the Monon tracks in Hammond.

Q. I will ask you to state whether or not in operating to that depot, using the depot as part of your operation, you did so under direction and suggestion of the Board of Works of the City of Hammond?

A. We did.

Q. Now, State Line street is where with reference to Hohman Street?

A. State Line runs directly parallel with and in the same direction as Hohman Street, north and south, within one block of Hohman Street.

Q. Which way from Hohman Street?

A. Westerly.

Q. And how far south is State Line street opened up for us?

A. I believe it is down to 15th street in Calumet City, if my memory holds correctly. That is as I remember
90 it. Beyond that point, I may state, the road is in such condition—

Q. It is open up to 15th Street.

The Court: Beyond that point, which way do you mean, north or south?

A. South of 15th Street the street is unpaved.

Q. Do you know whether it is opened at all south of 15th street?

A. It is opened up, yes, there is a passage way through there, very rough, unpaved, and over the Little Calumet River is a bridge over which trucks of three tons, or two tons capacity—in that vicinity—are prohibited to move, and do so at their own risk.

Q. May I mark 15th street with a cross? North of 15th is State Line street open?

A. Yes, sir.

Q. How far north?

A. I couldn't answer that except in so far as its location to the black dot dot on my map is concerned. I don't know how much farther it goes.

Q. It is open, in fact, all the way north to the Michigan Central tracks, as indicated on this map, is it not?

A. My knowledge only goes to this hospital here. I am not sure about the Michigan tracks.

Q. Do you know whether it is opened up as far as Rimbach Avenue?

A. Yes, sir.

91 Q. From 15th street north, how is that street up to Standard Avenue with respect to its condition for the purpose of bus travel?

A. If I remember correctly, it is paved but very, very rough. It would be considered impractical to operate buses over it.

Mr. Peters: I move to strike out "it would be impractical."

Mr. Crumpacker: Q. It is very rough from 15th how far north?

A. I should think to—if I could see the map, I could answer more intelligently. North of Standard, I should say—

The Court: You say it is very rough as far as Standard?
A. Yes.
Mr. Crumpacker: That answers the question. Q. Here is Standard. Mark that with a circle. Down to there it is open, but very rough. From there on north it is all right.
A. It is in fair condition, but it is not a good pavement by any means.
The Court: How is the pavement on Hohman street?
A. Hohman Street is well paved. It is very good, very wide street.
The Court: How wide?
A. I don't know the dimensions of the street. I should imagine—well, I couldn't answer how many feet, but it is a very wide street—a boulevard, in fact.
92 Mr. Crumpacker: That is all.

Cross-Examination by Mr. Peters.

Q. You stated that your depot at the candy store on Fayette Street was fixed by the Board of Public Works?
A. Sibley street.
Q. Sibley street. When was that done?
A. I don't remember the date. Why I answered it in that manner—I appeared before the Board of Public Works in relation to a permit to enter our property at the South Shore station, and at that time Mr. Swanson, chairman of the Board of Public Works, said that our station, as marked out by the Board of Public Works, was at George Dixon's store.
Q. You operate a portion of the Gary Street Railway also?
A. Yes, sir.
Q. Might you not have been talking about that?
A. No, this was in relation to buses.
Q. You are sure of that?
A. I am positive of that, sir.
Q. When was that?
Mr. Crumpacker: That they designated the depot?
The Witness: Why, it was approximately one month ago. The date has escaped my memory.
Q. Of course, you would not attempt to say that the Board had actually entered an order. You never saw an order
93 fixing that as your depot?
A. No, sir.
Q. For bus operation?

A. No, sir; I personally never saw one.

Q. You spoke of your depot on Sibley Street. The fact is that your coaches stop in the street, do they not?

A. Yes, sir.

Q. And take on and discharge passengers in Sibley Street?

A. On Sibley Street, yes, sir.

Q. That is, between the curbs of that street?

A. Yes.

Q. Sibley Street has two tracks on it between the Monon tracks and Hohman Street?

A. Yes, sir.

Q. Approximately how wide is Sibley Street?

A. Oh, I should say it was 30 feet, a rough guess.

The Court: You mean from curb to curb?

A. From curb to curb, yes, sir.

Q. And, of course, there are taxi-cab stations on Sibley street also?

A. I don't know whether there are taxi-cab stations. I know they park where there are no parking signs.

Q. You have seen taxi-cabs standing there.

A. Yes, sir, I have.

Q. And also the Gary Street Railway Company operates street cars at frequent intervals on Sibley Street, and they stop at this same place.

A. Just beyond Dixon's store, perhaps 25 or 30 feet.

Q. That is the end of operation?

A. That is the end of the Gary Street Railway Company street car operation, yes, sir.

Q. The cars coming in there stop a certain length of time.

A. Just long enough to change ends.

Q. For how long would you say?

A. I should judge two or three minutes. If they are ahead of time, posisbly longer than that.

Q. How many cars do you operate in there during 24 hours?

A. Eighteen hours of operation, I believe, four cars per hour.

Q. They are the usual size street cars?

A. Yes, sir.

Q. It is a fact that a bus cannot pass between one of those cars and cars parked at the curb.

A. I believe a bus can pass. I believe I have seen it.

Q. You are not sure about the dimensions of the street.

A. I am not sure about the thirty feet, no.

Q. On one corner of Sibley and Hohman is one bank and on the other corner is another bank.

A. Yes, sir.

Q. Across the street is a large department store.

A. Yes, sir.

95 Q. Down at the intersection of Sibley and the Monon railroad is the Monon station.

A. Yes, sir.

Q. Down farther on Sibley street, at the intersection of the Nickle Plate, is the Nickle Plate station.

Q. And persons desiring to go to the Monon or Nickle Plate stations by taxi-cab or other vehicles go down Sibley Street, that is, coming from Hohman Street.

A. It would be the most direct route.

Q. Are you familiar at all with the amount of traffic that the Monon brings into the City of Hammond?

A. Only through observation. I don't know any figures.

Q. It is a heavy traffic.

A. It is a heavy traffic, yes, sir.

Q. In other words, the Monon trains carry a great many passengers between Chicago and the City of Hammond.

A. Yes, I think that is true.

Q. You don't mean to say that you have private grounds on Sibley street on which you stop your coaches?

A. No, we don't have private grounds on which we stop.

Q. In other words, your station consists of a place to sell tickets and a waiting room in a candy store and a place out in front of the candy store, or near to it, where your coaches stop?

A. Yes, sir.

96 The Court: See if I understand this correctly—you are the superintendent of the Gary Street Railway Company?

A. The Gary Street Railway Company and the Farina Bus Line Company.

The Court: Both?

A. Yes, sir.

The Court: This Gary Street Railway Company has two tracks on this Sibley street?

A. Yes, sir.

The Court: Their station is also on Sibley?

A. Yes, sir.

The Court: Then the Farina bus Line—

A. Is on Sibley Street, right close to the street car station, within 30 or 40 feet of the end of our line.

The Court: You are manager of both companies?

A. I am superintendent.

The Court: Of both the street car company and the bus line?

A. Yes, sir.

Mr. Peters: That is all.

Redirect Examination by Mr. Crumpacker.

Q. As to Hohman Street, throughout its entire length, from the south city limits where you come in, all the way down to Russell, what is the fact as to whether that street is approximately an 80-foot street, if you know.

A. Why, it is very wide. I should imagine it approximates that, yes, sir.

97 The Court: You mean from curb to curb?

Mr. Crumpacker: Yes.

Q. You know that it was recently widened from Russell Street south to Carroll Street on the east side?

A. Yes, sir; it has been widened—partially completed, I believe.

Q. Now, on that street, from Russell Street south, is a single track of the Hammond, Whiting line, is there not?

A. Yes, sir.

Q. Down as far as Conkey Avenue?

A. Yes, sir.

Q. Where it turns east.

A. Yes, sir.

Q. What is the extent of the traffic on Hohman Street from the point where it crosses the river on north to Russell Street, generally?

A. I should say it is very light for an 80 foot street.

Q. And the south part of Hohman Street, that is from Conkey Avenue south to the river—rather from Standard Avenue south to the river, what is the fact as to whether that is open territory or closely built up territory.

A. Very open territory.

Q. What is the fact as to whether in that territory, generally speaking, there are many houses now being built?

A. There are considerable number of houses now being built.

98 Q. That is a residence district.

A. Yes, sir.

Q. What is the fact as to whether there is any congestion

resulting from the operation of your buses—whether it is confined to Sibley Street, that part that lies between the Monon tracks and Hohman Street, where your depot is.

A. I don't quite grasp the question.

Q. Is there any congestion of traffic under your operation on Hohman street from the south city limits north as far as Russell Street?

A. I should say there was no congestion there caused by our buses.

Q. Do you run north of Sibley Street at all, your buses?

A. We have run one bus to the South Shore depot every four hours; that is still running.

Q. That is still running?

A. Yes, sir.

Q. You operate that—

A. Pardon me, just a minute. You refer to the Farina Company?

Q. I am referring to the Farina Company.

A. No, sir; we do not.

Q. The district that is bounded by State Line on the West, Ann Street on the east, Rimbach Avenue on the north, that block, do you have that in mind?

A. Yes.

Q. Will you state whether that block is in the resi-
99 dence district or business district of Hammond?

A. Very much in the residence district, I should judge.

Q. I think that is all.

Recross Examination by Mr. Peters.

Q. Hohman Street is the main north and south street of the city, is it not?

A. I should call it so, yes. There are others.

Q. You know from observation that the heaviest traffic in the city of Hammond is on Hohman Street.

A. I wouldn't want to say that.

Q. Where is it if it isn't there?

A. I think Calumet Avenue probably carries as much.

Q. Isn't it a fact that all the important business house in the city of Hammond are on Hohman Street?

A. If you refer to the business houses—I thought you meant traffic. There are no street cars on Calumet Avenue. For that reason I thought traffic was heavier, because I myself detour on Calumet Avenue.

Q. In fact, most people who are in a hurry to go through Hammond travel on Calumet Avenue rather than on Hohman Street.

A. I should imagine they would.

Q. In other words, Hohman Street is the busiest street, north and south street in Hammond.

A. In my opinion, Calumet and Hohman streets are about the same.

100 Q. But Hohman Street is a congested street.

A. Yes, sir.

Q. Of course, you are not prohibited by this ordinance from operating south on Russell Street on Hohman Street, are you?

A. I don't like to answer that question because I am not familiar with that ordinance.

Mr. Crumpacker: They are not permitted to go on Hohman Street at all under the ordinance except up to Standard Avenue from the south, and there you can't stop or take on passengers. He is prohibited from the entire length of Hohman Street north of Standard Avenue.

Mr. Peters: (Q) Now you have never received any written permit from the Board of Public Works, that is, the Farina Company, to use this place as a station, have you?

A. I wouldn't want to say that the company never has. I have never seen it.

Q. Do you remember going to the city attorney and the city attorney saying that they turned you down, or something of the sort, in relation to that matter? Do you remember asking for such a permit?

A. I have been connected with this company eight weeks. I never personally asked for a permit. I believe a permit was asked for.

Mr. Crumpacker: But you were present at some session of the Board when orally it was stated by the Board or

101 somebody on it that you could use that as your station.

A. Mr. Swanson said that was our depot, so appointed by the board.

The Court: Who is Mr. Swanson?

A. Chairman of the board of public works of the City of Hammond.

Mr. Crumpacker: That is all the evidence I have to submit.

40 (PLAINTIFF'S EXHIBIT TWO)

Ordinance ~~No.~~ 1897 --

An Ordinance Approving A Certain Franchise, Granting Unto Harold E. Miner, Trustee, His Successors And Assigns, The Right To Maintain And Operate In And Upon, Along And Across The Streets, Alleys, And Other Public Places Within The City Of Hammond, Motor Busses, Coaches And Omnibuses For The Carriage And Accommodation Of Passengers For Hire.

Whereas, heretofore, to-wit: on the 29th day of August, 1924, the City of Hammond, Indiana, by and through its Board of Public Works, entered into the following contract and agreement with Harold E. Miner, as Trustee, to-wit:

This Indenture Of Agreement made and entered into this 7th day of July, 1924, by and between the City Of Hammond, Indiana, by its duly authorized Board of Public Works, hereinafter known as the City, and Harold E. Miner, hereinafter known as Trustee, Witnesseth:

Section 1. That for and in consideration of the execution of this contract, and the performances of the promises as hereinafter set forth on the part of the Trustee, and subject to all the provisions, conditions, requirements and limitations hereof, the said City does hereby consent, permit and authorize the said Trustee, his successors and assigns,
41 to maintain and operate in, upon, along and across all the streets, alleys and public places under the control and within the limits of the City of Hammond, Indiana, or over which said City may hereafter have jurisdiction or control, motor busses, coaches or omnibuses for the accommodation and carriage of passengers for hire, and in connection therewith, said Trustee may cause said motor busses, omnibuses or coaches to make all necessary or convenient stops upon said streets, alleys and public places for the receiving and discharging of passengers, at such places as may be reasonable, said Trustee or his assigns to operate his said motor busses, omnibuses or coaches over such boulevards and streets as are hereinafter designated, and in addition thereto, over any or all streets, alleys and public places as may be deemed advisable by said Trustee for such operation, or over such streets, alleys or public places as may be convenient or neces-

sary to operate in connection with and incidental to the routes as hereinafter designated.

Section 2. The Trustee, his successors and assigns, hereby agree to cause to be operated motor busses at the times and intervals as the necessities of the traffic require, over the following alleys, streets and public places, in the city of Hammond, Indiana, and on the routes as herein designated, to-wit:

Route 1. State and Hohman to Highland; Highland to Columbia; Columbia to Morton Avenue; Morton Avenue to Calumet; Calumet to Highland; return to State and Hohman.

42 Route 2. State and Hohman to Calumet; Calumet to Standard; Standard to Van Buren; Van Buren to Kenwood; Kenwood to Hohman; Hohman to State and Hohman.

Route 3. State and Hohman to Hoffman; Hoffman to Sheffield; Sheffield to Huehn; Huehn to Calumet; Calumet to Chicago Avenue; Chicago Avenue to Ash; Ash to 150th; 150th to Calumet; Calumet to State; State to State and Hohman.

Route 4. State and Hohman to Calumet; Calumet to 150th; 150th to city limits east and return over same route; and over such additional and further routes as may be established from time to time, according to the necessities of the traffic.

Section 3. Said right to maintain or operate said motor busses shall be held and enjoyed by the Trustee, his successors and assigns, for a term of twenty-five (25) years from the date upon which operation is commenced under this ordinance by the Trustee, his successors and assigns.

Section 4. The Trustee, his successors and assigns shall convey passengers on it routes within the city of Hammond, at a fare not exceeding ten cents (10c) per passenger for one continuous trip one way on the several different routes in said City and shall issue transfers on its lines in said City so that one fare shall entitled a passenger to one continuous trip from one point on any route in the City of Hammond to any other point reached by any other route in the City, whether the same requires one transfer or more; provided, that

43 such transfers shall be good only on the first bus departing from such junction point after the same is issued and said transfers are not transferable, then such transfer shall be honored by the next departing bus; provided however, that children under the age of seven (7) years and accompanied by their parent or guardian, shall be entitled to ride free on said busses; provided further, that children going

to and from any public or parochial school in the City of Hammond to attend said school, shall be entitled to purchase at the office of the Company, books of tickets, in either ten, twenty or thirty fares at the rate of five cents (5c) for each continuous trip, as aforesaid; provided further, that uniformed policemen, firemen, while in uniform, and carriers of United States mail, in uniform, shall be entitled to ride free of charge on said busses.

If and when the Trustee extends his motor bus service to the cities of Whiting and East Chicago, Indiana, and Calumet City, Illinois, either or any of them, the single continuous fare, including transfer, if any, between any point on his line in the city of Hammond and any point on said lines in said other cities, either or any of them, shall not exceed the then existing fare for such trip within the limits of the city of Hammond.

Section 5. The Trustee, his successors and assigns shall pay to the City for the privilege hereby granted, the following sum of money:

During the term hereof, an annual sum which shall be equal to three per cent (3%) of the gross annual receipts
44 derived from operation upon the boulevards and streets in the City of Hammond. The gross annual receipts derived from the operation upon the streets and boulevards of the City of Hammond shall be that proportion of the total gross receipts of the Trustee, his successors and assigns, from all sources within the limits of Lake County, Indiana, as the number of bus miles operated per annum over streets and boulevards under the jurisdiction of the City, bears to the total number of bus miles operated by the Trustee, his successors and assigns, per annum within Lake County, Indiana.

The annual charges shall commence from beginning of operation herein. All annual charges as above provided shall be paid to the City semi-annually on the first days of September and March in each year. The payment to be made September first shall, in each instance, be for the amount due to July first last preceding, and the payments to be made March first shall, in each instance, be for the amount due to January first last preceding; provided, that the first semi-annual payment shall be only for that proportion of the first semi-annual charge, as the time between the date upon which operation is begun by the Trustee, his successors and assigns, and the date of the next semi-annual payment thereafter shall bear to the whole of one-half year. None of the pay-

ments to be made to the City under the terms of this ordinance shall be considered in any manner in the nature of a tax, but payments shall be made in addition to any and all taxes of whatsoever kind or description now or hereafter required to be paid by any ordinance of the City or any law of the State of Indiana. The moneys thus derived or as much thereof as may be necessary, shall be used by the City in the maintenance and repair of streets and public places. The Trustee, his successors and assigns in addition thereto, shall keep or cause to be kept the streets, etc. over which busses are operated, free of snow in the winter months so that busses and other vehicles may move therein.

Section 6. The amount of money hereby agreed to be paid as and for the rental for the use of the streets as herein provided, shall be paid continuously for the term of this leasehold, and so long as operation continues under and by virtue of the terms hereof; provided, that if, and in the event a franchise is granted by the City to any person, firm or corporation, which is in a business competitive directly or indirectly, with the Trustee or his assigns, then and in that event, upon the granting of such competitive franchise, the amounts herein agreed to be paid shall, by the granting of such franchise, be released and rescinded and the Trustee and his assigns shall then and there be relieved from the payment thereof.

Section 7. Upon the termination of the permission and authority hereby granted by the expiration of the twenty-five (25) year term, in case the right of the Trustee, his successors and assigns is not renewed, or by any forfeiture of the right of the Trustee, his successors and assigns, at an earlier date, in accordance with the provisions of this ordinance, the City shall have the right to purchase all of the tangible property of the Trustee, his successors and assigns, used for the operation of motor busses under the provisions of this ordinance, except such part thereof if any, as said Trustee, his successors and assigns shall be prevented from selling to said City by some valid obligation assumed prior to the psasage of this ordinance, at a price representing the fair value of such property, determined either by agreement or by condemnation proceedings, if the same shall be authorized by law for such purpose, or by arbitration as herein provided.

If the City shall desire to purchase such property, it shall

give to the Trustee, his successors and assigns, notice, in writing, of its intention so to do, not less than one (1) year prior to the termination of the right of the Trustee, his successors and assigns, by the expiration of the original twenty-five year term, but if the permission and authority granted to the Trustee, his successors and assigns, shall be forefited at an earlier date in accordance with the provisions of this ordinance, the City shall be entitled to proceed toward the purchase of such property as herein provided, immediately upon giving notice, in writing, to the Trustee, his successors and assigns, after such forfeiture, but not later than three (3) months thereafter. If the City desires to purchase the property of the Trustee, his successors and assigns, but the City and the Trustee, his successors and assigns fail to agree upon the
47 value to be paid therefor, within sixty (60) days after written notice from the City to the Trustee, his successors or assigns, of its intention to purchase such property, the City shall be entitled within four (4) months from the date of such notice, in writing, of its intention to purchase such property, either to begin condemnation proceedings for the determination of the value of the same, in case condemnation proceedings for such purpose shall then be authorized by law, or to take steps toward the submission of the matter of such fair value, to arbitration in the manner herein provided. If condemnation proceedings shall be begun, the procedure and rights of the parties thereunder shall be governed by the law applicable thereto. If the matter of such fair value shall be submitted to arbitration, the procedure shall be as follows:

Not less than fifteen (15) days after written notice from the City to the Trustee, his successors and assigns, of its intention to purchase such property, the Trustee, his successors and assigns shall choose one disinterested person as an arbitrator and notify the City in writing, of his choice; within not less than fifteen (15) days after such notice in writing, to the City of the selection of such arbitrator by the Trustee, his successors and assigns, the City shall choose one disinterested person as an arbitrator and notify the Trustee, his successors and assigns, in writing, of its choice. If either the Trustee, his successors and assigns, or the City fails to choose an arbitrator and give written notice of its choice with-
48 in the time herein limited, a disinterested person may be selected as an arbitrator in its behalf by the other party (that is, the City or the Trustee, his successors and assigns,

as the case may be). The two arbitrators thus selected shall choose a third arbitrator and give written notice of their choice to the Trustee, his successors and assigns, and the City, not less than thirty (30) days after the selection of the arbitrator by the City. In the event that the two arbitrators first selected are unable to agree upon the selection of such third arbitrator, and fail to give written notice of their choice within the time limited herein, the Judge of Room One of Superior Court of Hammond may appoint such third arbitrator, upon application, in writing, by either the Trustee, his successors and assigns, or the City. The three arbitrators immediately upon their election shall begin the determination of the fair value of the property of the Trustee, his successors and assigns shall proceed with such determination as expeditiously as may be, and shall determine and report, in writing, to the Trustee, his successors and assigns, and the City, the fair value to be paid for the property of the Trustee, his successors and assigns, upon the basis above explained, within a period not longer than three (3) months after the date of their selection. A majority of such arbitrators may exercise the powers of such board of arbitrators and the decision under oath of such arbitrators or of a majority thereof, shall be final and conclusive as to the fair value of such property.

49 Any vacancy in such board of arbitrators caused by death, resignation, refusal to serve or any other cause, shall be filed within ten (10) days after notice, in writing by the Trustee, his successors and assigns, or the City, in the same manner that is provided for the original selection of such arbitrators. The determination by such arbitrators of the fair value of the property of the Trustee, his successors and assigns, may be based upon their own experience and upon such information as they may obtain by inquiries and investigations without the presence of either party. They shall have the right to examine any of the books of the Trustee, his successors and assigns, and their officers under oath. The compensation and expenses of the arbitrators in case of arbitration shall be borne jointly by the City and the Trustee, his successors and assigns, each paying one-half thereof.

Section 8. No assignment, lease or sub-lease of the rights and privileges hereby granted, or any part thereof, or any of the routes mentioned herein or of any part thereof, shall be valid or effectual for any purpose unless the said assignment, lease or sub-lease shall contain a covenant on the part

of the assignee or lessee that the same is subject to all the conditions of this ordinance, and that the assignee or lessee will assume and be bound by all the terms and conditions, and especially said conditions as to payment, anything in any statute or in the charter of such assignee or lessee to the contrary notwithstanding; and that the said assignee or lessee shall waive any more favorable conditions created by
50 such statute or its charter, and that it will not claim by reason thereof, or otherwise, exemption from liability to perform each and all of the conditions of this ordinance.

Section 9. The Trustee, his successors and assigns, shall commence operations hereunder within sixty (60) days after passage of an ordinance approving this contract by the common council of the City of Hammond; provided that such period may be extended by the City for a period or periods not exceeding the aggregate three (3) months; and provided further, that when the commencement of said operations shall be prevented by legal proceedings in any court or by works of public improvement or by other causes not within the control of the Trustee, his successors and assigns, the time for the commencement of such operation may be extended for the period of such prevention, but no delay shall be allowed for legal proceedings unless such proceedings shall be diligently prosecuted by the Trustee, his successors and assigns; and provided further, that in no case shall such delay be deemed to begin until the Trustee his successors and assigns, shall have given written notice to the City of such legal proceedings or other occasion of delay, and delivered to the City, copies of any injunction or other orders, and the papers upon which the same shall have been granted, and unless upon request of the City, the Trustee, his successors and assigns, shall in writing consent that the City may intervene in any such proceedings.

51 Section 10. Nothing herein contained shall be construed as permitting the Trustee, his successors and assigns, to erect any structures whatever upon boulevards or streets in the City, and the Trustee, his successors and assigns shall not construct or maintain any fixtures or structure in such boulevards and streets unless especially authorized by the City.

Section 11. All vehicles which may be operated pursuant to this ordinance shall comply with the following general requirements:

1. They shall be propelled by power generated or con-

tained within the vehicle itself or by storage battery, or other motive power, but no power shall be used which will, in its generation or use, produce smoke or noxious odors sufficient, in the opinion of the City or its authorized representative, to constitute a nuisance.

2. The maximum weight, including fuel, water, oil or any other material or any accessories used in operation, shall not exceed twelve thousand five hundred (12,500) pounds.

3. The maximum width shall not exceed eight (8) feet.

4. The maximum length shall not exceed twenty-seven feet, six inches (27′ 6″).

5. They shall be designed and constructed in a manner which will permit ease and freedom of movement under all conditions.

6. The distribution of eight on axles, length of wheel and other features of design shall be such as to avoid skidding, as far as reasonably possible, and shall be such as 52 to permit easy steering and control.

7. They shall be fitted with brakes reasonably capable of stopping and holding same under all conditions.

8. All parts shall be so constructed that no undue noise or vibration shall result from operation.

Section 12. No motor bus or omnibus shall be operated pursuant to this ordinance, unless there shall be painted thereon in letters sufficiently large to be clearly visible for a distance of seventy-five (75) feet:

(a) The name of the Trustee, his successors and assigns, owning and operating such vehicle.

(b) The number of the vehicle which is assigned to it.

Section 13. The destination of each omnibus or motor bus shall be plainly indicated on the front of the vehicle, and shall be illuminated at night.

Section 14. The Trustee, his successors and assigns, shall not permit any advertising on the outside of any motor bus, other than that relating to the business of the Trustee, his successors and assigns.

Section 15. The enclosed lower portion of all motor busses or omnibuses which are operated on said routes shall be heated during the cold weather, in conformity with such laws and ordinances as are now in force affecting surface railway cars or such reasonable laws and ordinances affecting motor busses or omnibuses as may hereafter, during the term of this ordinance, be in force, or as may be required by the City.

53 Section 16. The busses or motor coaches operated by the Trustee, his successors and assigns, hereunder, shall have adequate and sufficient illumination at night, both for the purpose of aiding passengers occupying said busses and also aiding drivers of other vehicles, to avoid busses. They shall also carry light or lights as may be required from time to time, by the laws of the State of Indiana, relating to the operation of motor vehicles.

Section 17. All reasonable laws and ordinances affecting the operation of motor busses or omnibuses now in force or which may be in force during the term of this ordinance, shall be complied with by the Trustee, his successors and assigns. The Trustee, his successors and assigns shall also comply with and enforce the carrying out of any orders or regulations which may be issued by the City, designed for the protection of persons or property, or for the comfort and health of the public. The Trustee, his successors and assigns shall comply with all the laws and ordinances of the City relating to traffic.

It is understood that the question of where stops shall be made for taking on and letting off passengers, is reserved until the Trustee, his successors and assigns, are operating hereunder, at which time the City and the Trustee, his successors and assigns, will decide on what will best meet the requirements of the situation.

Section 18. Motor busses shall be run on the routes herein designated between the hours of 5 A. M. and 12 midnight and such other routes as may be established from time to time
54 between such hours and at such intervals as the necessities of traffic require.

Section 19. It is understood that the Trustee, his successors and assigns shall operate, pursuant to this ordinance, the routes herein specified, but should vehicular traffic be diverted from any portion of any of the boulevards or streets constituting said routes, because of fires, parades or because of any other event which will close the street to vehicular traffic temporarily, then the Trustee, his successors and assigns may use such other boulevards or streets as are necessary to continue its operation. If, however, for any reason any of the boulevards or streets in which operation is hereby specified shall be closed to vehicular traffic for a longer period than twenty-four (24) hours then the Trustee, his successors and assigns, shall use his discretion for the operation upon other boulevards or streets for the period during which such boulevards or streets may be closed.

Section 20. The Trustee, his successors and assigns shall, at all times, keep accurate books of account of the gross receipts from all sources within the limits of operation provided for in this ordinance, and shall, on or before March first of each year, make a verified report to the City of the business done by the Trustee, his successors and assigns, for the year ending December thirty-first next preceding. Such report shall contain a statement of such gross receipts, the number of omnibuses in operation, the total miles in operation provided for in this ordinance, and such other in-
55 formation as the City may require. The City shall have access to all books of the Trustee, his successors and assigns, for the purpose of ascertaining the correctness of its report, and may examine his officers under oath.

Section 21. In case of any violation or breach or failure to comply with any of the provisions herein contained, the permission and authority herein granted may be revoked or forfeited, at the option of the City by resolution of the Common Council without proceedings at law or in equity; provided however, that no such action by the City shall be taken until the City shall give notice to the Trustee, his successors and assigns, to appear before it on a certain day not less than thirty (30) days after the date of such notice, to show cause why each resolution declaring the permission or authority revoked or forfeited, should not be adopted, and the Trustee, his successors and assigns, shall not have remedied such violation, breach or failure within said time. In case the Trustee, his successors and assigns, fail to appear, action may be taken by the City forthwith. Any false entry in the books of the Trustee, his successors and assigns, or false statement in the report to the City as to a material fact, knowingly made by the Trustee, his successors and assigns, shall constitute such a violation or breach or failure to comply with the provisions herein contained, as to warrant the forfeiture or revocation of the permission and authority herein granted. Noth-
ing herein contained shall affect the right of the Trustee,
56 his successors and assigns, to apply to a court of competent jurisdiction for review of any action of the City forfeiting the privilege or consent herein granted. If the Trustee, his successors and assigns, shall fail to commence operations hereunder within the time herein limited, and such failure shall not be occasioned by legal proceedings, works of public improvement, or from some other cause or causes not within the reasonable control of the Trustee, his successors

and assigns, then unless the Trustee, his successors and assigns shall commence such operations as herein provided, this ordinance may, at the election of the City, be terminated.

Section 22. The Trustee, his successors and assigns, herein covenant and agree to carry in a first class and solvent stock insurance company, adequate and full coverage against injuries to person or property arising out of its operation hereunder.

Section 23. If the Trustee, his successors and assigns shall fail to give reasonably adequate public service at the rates herein fixed, or fail to maintain his equipment as herein provided in good condition throughout the whole term of this ordinance, the City may give notice to the Trustee, his successors and assigns, specifying any default on the part of the Trustee, his successors and assigns, and requiring the Trustee, his successors and asigns to remedy the same within a reasonable time; and upon failure of the Trustee, his successors and assigns, to remedy such default within a reasonable time, the Trustee, his successors and assigns, shall, for each day thereafter during which the default or defect
57 remains, pay to the City the sum of Fifty ($50.00) Dollars as fixed or liquidated damages.

Section 24. It shall be conclusively deemed that this contract is made and is acceped with full knowledge on the part of the Trustee, his successors and assigns of the condition of the paving of the boulevards and streets; and the City shall not, during the life of this ordinance, be required to make any improvements or repairs to any such boulevards or streets called for by the Trustee, his successors and assigns, except to expend the sums provided herein on them.

Section 25. The Trustee, his successors and assigns shall assume all liability for damages to persons or property occasioned by reason of the operation of the motor bus or omnibus routes authorized by this ordinance, and it is a condition of this ordinance that the City shall assume no liability whatsoever to either persons or property on account of the same. In the event of any suits being brought against the City by reason of the operation of said motor busses, then the City shall promptly notify the Trustee, his successors and assigns of all such suits and deliver to the Trustee, his successors and assigns in due time all process, papers and other documents in their possession, relating to the same, and in such event, the Trustee, his successors and assigns shall, at their own expense, and in the name of the City, or otherwise, de-

fend all such suits and pay the full amount of any and all judgments which shall be entered against the City therein.

58 Section 26. The word "notice", "order" or "direction" wherever used in this contract, shall be deemed to mean a written notice or direction. Every such notice or direction to be served upon the Trustee, his successors and assigns, shall be delivered at such office in the City of Hammond, as shall have been designated by the Trustee, his successors and assigns, or if no such office shall have been designated, or if such designation shall for any reason become inoperative, shall be mailed in the City of Hammond by United States registered mail, postage prepaid, addressed to the Trustee, his successors and assigns, at said City of Hammond. Delivery or mailing of such notice or direction as and when above provided shall be equivalent to direct personal notice or direction, and shall be deemed to have been given at the time of delivery or mailing.

Section 27. The words "boulevards" and "streets" wherever used in this ordinance, shall be deemed to mean "all streets, avenues, highways, driveways, parks, parkways, concourses, boulevards, bridges, viaducts, tunnels, public places and any other land or property over which the City has control" encountered in the routes hereinabove described, and upon, in, along and across which authority is hereby given to the Trustee, his successors and assigns to operate motor busses or omnibuses.

Section 28. All motor busses operated under the permission and authority hereby granted shall be driven only by persons who shall comply with the laws of the State of Indiana and the ordinances of the City of Hammond, now or

59 hereafter in force in reference to chauffeurs' or drivers' licenses or the like; and no such motor busses shall at any time be operated at a greater rate of speed than shall from time to time, be permitted by law or by ordinances of the City.

Section 29. Nothing in this Ordinance contained shall be construed as depriving the City of the right of exercising any police power which it would have possessed or enjoyed had this Ordinance not been adopted. The enumeration herein of special requirements and specific regulations shall not be taken or held to imply the relinquishment by the City of its power to make other regulations or requirements, and the City hereby expressly reserves the right to make all regula-

tions which may be necessary to secure in the most ample manner, the safety, welfare and accommodation of the public, including among other things, the right to pass and enforce ordinances to protect the public from danger from the management and operation of said motor busses and insure the comfort and convenience of the people.

Section 30. The Trustee, his successors and assigns covenant and agree on their part and behalf to conform to and abide by and perform all the terms, conditions and requirements in this Ordinance fixed and contained.

Section 31. This contract shall be in force and take effect from and after its approval and passage by the Common Council of the City of Hammond.

Section 32. By the approval of this contract, the same shall be of the same force and effect as an ordinance, and all ordinances or parts of ordinances inconsistent or in conflict herewith shall be, by such approval of this contract, repealed.

60 Section 33. The City agrees to cause to be passed after the acceptance hereof, and the commencement of operation hereunder, valid ordinances preventing and prohibiting the operation of jitneys and the like on any streets, the operation upon which is hereby granted to the Trustee, his successors and assigns.

Section 34. It is understood and agreed by and between the Trustee, his successors and assigns, and the City, that the rates, routes and hours of service herein, shall be as herein specified, and the Trustee, his successors and assigns shall carry the public at the rates as herein required to be paid, and shall operate busses at the times as herein required to be operated, and over the routes as herein required; provided however, that if, and in the event either the City or the Trustee, his successors and assigns, shall at any time, come to the conclusion that the rates, routes, or hours of service herein are unreasonable, oppressive or inadequate, then either party may, upon thirty (30) days notice, change or order or require the rates, hours of service and routes to be changed, and if, and in the event, the party seeking the change cannot come to an agreement with the party against whom the change is sought, at the expiration of said thirty (30) days, then the matter shall be referred to a board of arbitrators, as provided in Section Six herein, who shall hear all the matters and things relevant to the controversy, that the parties hereto desire to produce, and shall have full power and authority

to make such orders relating to hours of service, rates
61 or routes, as may seem to them to be reasonable and just under the circumstances; that is to say, the parties hereto may, if possible, agree upon changes with reference to rates, routes and hours of service, but if they cannot agree, then the same shall be submitted to the said board of arbitration, and they shall, within ninety (90) days thereafter, determine the matter, enter an order concerning the same, and that such order so entered by them shall be full, final and conclusive upon the parties, and each party shall be bound to do and perform the things required by the order of said board of arbitration, the same as if written herein originally, until either party may subsequent thereto, file or cause to be filed, a notice of an additional charge, it being understood that changes may be made from time to time, and in the manner herein provided, in the terms of this contract, insofar as the same relates to rates, routes and hours of service.

It is further understood and agreed that if and in the event the City shall grant to any person, firm or corporation, any right, contract or franchise over the streets, alleys and public places in the City of Hammond, which in anywise directly or indirectly competes with the business of this Trustee, his successors and assigns, then and in that event, upon the granting of such contract or franchise, the Trustee, his successors and assigns herein may at their discertion, have the option to withdraw from any of the routes herein prescribed, charge different rates for public service (in no event
62 greater than a reasonable rate) or may reduce the frequency of operation, as may seem best to them.

Section 35. The Trustee, his successors and assigns shall, upon the adoption of this contract and ratification by the City Council, execute a good and sufficient bond to the City of Hammond, in the penal sum of Five Thousand ($5,000.00) Dollars, conditioned to faithfully carry out the conditions of this contract.

Witnesseth the parties this 29th day of August, 1924.

CITY OF HAMMOND, By
A. J. SWANSON (signed)
J. V. KEELER (signed)
F. C. DIETRICH (signed)
ITS BOARD OF PUBLIC WORKS
HAROLD E. MINER (Signed)
Trustee.

And Whereas, said contract has been submitted by said

Board of Public Works to the Common Council of the City of Hammond, Indiana, for its consideration and action;

Therefore:

Section 1. Be It Ordained by the Common Council of the City of Hammond, Indiana, that said contract as above set forth be, and it is hereby in all things confirmed and approved.

Section 2. This Ordinance shall take effect and be in full force and effect from and after its passage and approval
63 by the Mayor.

(signed) R. G. CONDE,
Presiding Officer.

Attest:
ARNOLD H. KUNERT,
City Clerk.

Passed by the Common Council and submitted to the Mayor for his approval this 5th day of September, 1924.

(signed) ARNOLD H. KUNERT,
City Clerk.

This ordinance is hereby approved this 8th day of Sept. 1924.

(signed) DANIEL BROWN,
Mayor.

Filed by the Mayor in the office of the City Clerk, after his approval thereon, this 8th day of September, 1924.

(signed) ARNOLD H. KUNERT,
City Clerk.

64 (PLAINTIFF'S EXHIBIT THREE.)

Ordinance No. 1898.

An Ordinance Amending Sections Two and Eleven of Ordinance No. 1750 Entitled "An Ordinance Regulating the Operation of Jitneys and Taxicabs Within the City of Hammond, Indiana, Defining the Term 'Jitney' and 'Taxicab' and Fixing the Rate of Fare, Providing the Conditions Under Which Jitneys May Be Operated Within Said City, Also Providing a Penalty for the Violation Thereof, and Declaring the Time Within Which Same Shall Take Effect."

Section 1. Be It Ordained by the Common Council of the City of Hammond, Indiana, that Section 2 of an Ordinance entitled "An ordinance regulating the operation of jitneys and taxicabs within the City of Hammond, defining the term 'jitney' and 'taxicab' and fixing the rate of fare, providing the conditions under which jitneys may be operated within said city, and declaring the time within which same shall take effect", being No. 1750 of said city, be and the same is hereby amended to read as follows, to-wit:

"Section 2. No person shall operate a jitney or taxicab within the city of Hammond, without having first obtained a license therefor, and filed a bond or indemnifying policy of insurance with the City Controller, as hereinafter provided. It shall be unlawful for any person, firm or corporation to operate a licensed jitney or taxicab within said city, except in compliance with the terms and conditions of this ordinance, but the provisions of this ordinance shall not affect, nor be applied to the use or operation of motor propelled vehicles operated under a franchise granted by the said city of Hammond."

65

Section 2. That Section 11 of said ordinance be and the same is hereby amended to read as follows, to-wit:

"Section 11. That any taxicab or jitney operator in taking on or discharging passengers shall stop at the nearest right-hand street crossing; provided that motor driven vehicles engaged in carrying passengers for hire between points within the city of Hammond and points outside of said city, shall have within said city, a terminus which, if upon a public street or other public place, shall be designated and set apart

to them by the Board of Public Works of the city, and shall not be permitted to stop to receive or discharge passengers at any other point in said city except at said terminus, unless such stop be for the purpose of discharging a passenger who was received by said motor vehicle at a point outside of the city, or receiving upon said vehicle a passenger whose destination is outside the city. Such motor vehicles doing business between said city and points outside thereof shall use the most direct feasible route between the city limits, at the point of entrance, and their designated terminal, such route to be selected and designated by the Board of Works of said city; provided further, that the terminus for motor driven vehicles entering the city from the south or west, shall
66 be at a point or points set apart by the Board of Public Works, west of Oakley Avenue and south of the right of way of the Michigan Central Railroad, where the same passes through the city of Hammond in an easterly and westerly direction, contiguous to Plummer Avenue, and such vehicles entering the city from the east or north, shall have a terminal or terminals designated by the said Board of Works, west of said Oakley Avenue and north of said railroad right of way; provided further, that except as above provided in this section, it shall be unlawful for the owner, operator or driver of any jitney, to stop for the purpose of receiving or discharging passengers on the following streets within the said city of Hammond, to-wit: On Hohman Street south of Gostlin Street; on Sheffield Avenue; on Calumet Avenue; on Michigan Avenue; on Highland Street; on Chicago Avenue; on Standard Avenue; on Conkey Avenue; on State Line Street; on Columbia Avenue; on Hoffman Street; on 150th Street; on State Street; on Sibley Street; on Fayette Street; on Rimbach Avenue; on Plummer Avenue; on 15th Avenue; but this limitation shall be effective only beginning with and during the time that transportation for hire by means of motor propelled vehicles commonly called motor coaches or motor busses, is offered to the public in said city, by any person, firm or corporation having a franchise with the city of Hammond so to do, and by virtue of such franchise.

(signed) R. G. CONDE,
Presiding Officer.

Attest:
(signed) ARNOLD H. KUNERT,
City Clerk.

67 Passed by the Common Council and submitted to the Mayor for his approval this 11th day of Sept. 1924.

(signed) ARNOLD H. KUNERT
City Clerk

This Ordinance is hereby approved this 12th day of Sept. 1924.

(signed) DANIEL BROWN,
Mayor.

Filed by the Mayor in the office of the City Clerk after his approval thereon, this 12th day of Sept. 1924.

(signed) ARNOLD H. KUNERT,
City Clerk

68 (PLAINTIFF'S EXHIBIT FOUR)

Ordinance No. 1945.

An Ordinance Regulating and Routing Certain Vehicles for Hire and Prohibiting Their Use of Certain Streets Within the City of Hammond.

Section 1. Be it Ordained by the Common Council of the City of Hammond, Indiana, that in order to promite public safety and order and to diminish the congestion of vehicular travel within said City, from and after the taking effect of this Ordinance it shall be unawful for any person, firm or corporation owning or operating any motor vehicle engaged in transporting passengers for hire, to move or run such vehicle on, upon or over any of the following parts of streets within said City of Hammond, to-wit:

On Hohman Street from Russell Street to Michigan Avenue;

On State Stret from Morton Court to Calumet Avenue;

On Sibley Street from the easterly line of the right of way of the Chicago, Indianapolis & Louisville Railway Company were the same crosses Sibley Street westerly to Morton Court;

On Fayette Street from Hohman Street to Oakley Avenue.

Section 2. From and after the taking effect of this ordinance it shall be unlawful for any person, firm or corporation owning or operating any motor vehicle carrying passengers for hire, to stop such vehicle for the purpose of

receiving or discharging passengers upon any street,
69 alley or other public place within said City; provided that the Board of Public Works may, for any period not exceeding six (6) months or successions thereof, permit such operation on any or all of the following designated parts of streets; Columbia Avenue between the south city limits and the right of way of the Michigan Central Railroad where the same crosses said Columbia Avenue; Sibley Street from Columbia Avenue to the easterly line of the right of way of the Chicago, Indianapolis & Louisville Railway Company; State Line Street from its southerly terminus to its northerly terminus at or near the right of way of said Michigan Central Railroad aforesaid; Rimbach Avenue from State Line Street to Ann Street; Ann Street from Rimbach Avenue to Russell Street; Russell Street from Ann Street to State Line Street, and for vehicles engaged strictly in interstate commerce, any street or other public place north of 122nd Street and east of Calumet Avenue.

Section 3. Whoever violates any of the provisions of Sections 1 and 2 of this ordinance, shall, upon conviction be fined in any sum not exceeding fifty ($50.00) Dollars for each and every offense, but nothing in this Ordinance shall be construed to impair the obligation of any contract to which the City is a party, under which such motor vehicles are now operated for hire within said City. Nothing herein shall apply to taxicabs.

Section 4. This Ordinance shall supplement such ordinances as are now in force, and repeal only so much of them or any part thereof as may be in direct conflict herewith.

70 (signed) GEORGE J. WOLF,
President

Attest:
(signed) ARNOLD H. KUNERT,
City Clerk

Submitted to the Mayor for his approval this 23rd day of May, 1025.

Approved by me this 23rd day of May, 1925.
(signed) DANIEL BROWN,
Mayor.

Filed in my office after approval by the Mayor this 23rd day of May, 1925.
(signed) ARNOLD H. KUNERT,
City Clerk.

State of Indiana } ss.
County of Lake }

I, Arnold H. Kunert, City Clerk of the City of Hammond said county and state, do hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 1945 passed by the Common Council on May 22nd, 1925, and as contained in Ordinance No. 6.

(signed) ARNOLD H. KUNERT
Clerk of City of Hammond.
(signed) By HARRIET KLEE
Deputy Clerk

(Seal)

MAPS

TOO

LARGE

FOR

FILMING

102 (PLAINTIFF'S EXHIBIT SIX)

Supplemental Affidavit of Charles W. Gifford.

IN THE DISTRICT COURT OF THE UNITED STATES

For the District of Indiana

Farina Bus Line and Transportation Company, a corporation, *Plaintiff*
vs
City of Hammond, a municipal corporation, *Defendant*
No. 26 In Equity

State of Indiana, County of Lake, } ss.

CHARLES W. GIFFORD, being first duly sworn, on oath says he is Superintendent of the plaintiff in the above entitled cause and is acquainted with geographical and traffic conditions in the city of Hammond and adjoining cities and towns. He further says that the City of Hammond extends from Lake Michigan on the north to the Little Calumet River as its southern boundary, a distance of approximately nine miles; the State Line between the states of Indiana and Illinois is its western boundary, and it extends easterly from that line a distance of about five miles to the corporate limits of the city of Gary in that portion of the city of Hammond lying approximately between the Grand Calumet River and the
103 Little Calumet River, and a distance varying from one and one-half to two miles from the State Line easterly to the corporate limits of the cities of Whiting and East Chicago, in that portion of the city lying north of the Grand Calumet River. Said city of Hammond has a population of forty thousand, and much of the territory embraced within its limits in the northerly and southeasterly parts of said city, is open and unoccupied, or sparsely settled; that there are many streets in said city upon which there are no houses or improvements at all, and many other streets in which there are few and scattered houses and improvements; that that portion of said city lying between Gostlin Street on the

north and Standard Avenue on the south, a distance of two and one-half miles, and between the State Line on the west and Calumet Avenue on the east a distance of one mile, is the built-up portion of said city, consisting of business buildings in the downtown district and residence buildings in the outlying portion thereof; that there is no congestion on any of the streets of said built-up portion of said city, due to automobile transportation, except for a block or two in the downtown business district; that none of the streets included in the plaintiff's route into said city to its depot on Sibley Street are or will be congested by the mere stopping of busses therein to take on or discharge passengers.

The City of Gary adjoins the City of Hammond on the east, and the Gary Street Railway Company operates a line of busses from said city to the same terminal used by the plaintiff, just east of Hohman Street on Sibley Street.
104 The plaintiff company is operted in connection with the Gary company, and by means of transfers between the two companies, many through pasesngers are carried from the city of Gary into various towns in Illinois to which the plaintiff's line runs. That this through service extends over the bus lines of both companies, transfers being made at said joint or common station on Sibley Street in Hammond.

Under Ordinance 1045 of the defendant city, neither company can run its busses to said common terminal. The plaintiff is not permitted to come closer to the business district than the intersection of Ann Street and Rimbach Avenue in said city, and the Gary Street Railway Company is required to remain east of the Erie tracks on Sibley Street. The two lines are separated by at least four blocks, and by reason thereof, it is impossible for the plaintiff and said Gary Street Railway Company to continue to operate said through service to and from the city of Gary and said towns in the State of Illinois.

On the 12th day of June, 1925, the plaintiff requested of the Board of Public Works of the defendant city, permission to operate its busses east and west over Russell Street from Ann Street to Oakley Avenue, north on Oakley Avenue to Sibley Street and on said Sibley Street to a common terminal and waiting room with the Gary Street Railway Company at some point east of the tracks of the Chicago and Erie Railroad. Said Board of Public Works declined to grant
105 such permit and offered the plaintiff permission to enter the city and run upon certain streets which were not

useful in conducting its business and which would make impossible the continuance of said through service between said city of Gary and said towns in the State of Illinois. Because of said fact and the impossibility of operating over the routes offered by said Board, without great damage to its business, the plaintiff declined to accept the proffered permits.

Affiant further says that since the filing of the complaint in this cause the Public Service Commission of the State of Indiana has issued to the plaintiff a certificate of convenience any necessity authorizing the plaintiff to operate its bus lines into said city, over the route now used by it to its depot and waiting room on Sibley Street.

And further affiant sayeth not.

(signed) CHARLES W. GIFFORD

Subscribed and sworn to before me the 10th day of July, A. D. 1925.

(signed) MOLLIE KRIEGER

(Seal) *Notary Public*

My commission expires November 5, 1925.

73 (DEFENDANT'S EXHIBIT "A")

Affidavit of John V. Keeler and Fred Deitrich

United States of America } ss.
District of Indiana }

IN THE DISTRICT COURT OF THE UNITED STATES

For the District of Indiana

(Hammond Division)

Farina Bus Line and Transportation Company, a corporation, *Plaintiff*
vs
City of Hammond, Lake County, Indiana, a municipal corporation, *Defendant*
} No. 26 In Equity

JOHN V. KEELER and FRED DIETRICH, each being duly sworn upon his oath, deposes and says: That they are each members of the Board of Public Works of the City of Hammond, Lake County Indiana, and that the affiant John V. Keeler has been a member of said Board of Public Works for the last two years, and was for seven years previous thereto, a member of the Common Council of the City of Hammond, Indiana, and was Chairman of the Transportation Committee of said Council; that affiant, Deitrich, has been a member of the Board of Public Works for aboue five (5) years; that A. J. Swanson is the third and only other
74 member of said Board, and that he is now on and extended trip to California and absent from the City.

Each affiant says that he is familiar with the various and several streets of said City, and particular in the business district thereof, and is also familiar with the traffic conditions therein.

Affiants further say that the business district of said City consists chiefly of Hohman Street from Michigan Avenue south to Condit Street, the principal business buildings of which are between Plummer Avenue and Clinton Street; that

it consists also of State Street from State Line Street to and slightly beyond Calumet Avenue to the east, the principal business buildings of which are between Morton Court and Sohl Street; further, of Sibley Street from Oakley Avenue to Morton Court, and of a portion of Fayette Street, of Rimbach Avenue and other streets intersecting Hohman Street and within a short distance thereof, and also of Calumet Avenue from Eaton Street north to the Grand Calumet River; that there are other business districts and centers in said city of less importance and extent; that each and all of said streets are sixty (60) feet in width, except Calumet Avenue, which is about eighty-four (84) feet in width; that there is a single track street car line in the center of Hohman Street from Muenich Court north to a distance of about six (6) blocks; a double track line thereon north of the Michigan Central Railroad to and beyond Michigan Avenue, and a passing switch the full length of the block between Muen-
75 ich Court and Russell Street, which is one block south thereof; that State Street has a double track street car line thereon from Calumet Avenue west to Hohman Street, and a single track street car line from Hohman Street west to Morton Court; that Sibley Street has a single track street car line thereon east of Oakley Avenue, and a double track street car line from Oakley Avenue to Hohman Street, and a single track street car line from Hohman Street to Morton Court; that Hohman Street, State Street, Sibley Street and Fayette Street are intersected and crossed by the double track railroad line of the New York, Chicago & St. Louis Railroad, the double track of the Erie Railroad, and the single track of the Chicago, Indianapolis & Louisville Railway, all having contiguous right of way; that many hundreds of cars are moving each day across said streets, and freight trains of more than one-half mile in length are slowly hauled across the same at grade; that Hohman Street is crossed at right angles by the Michigan Central Railroad, consisting of four main tracks, located slightly more than one block north of the corner of State and Hohman Streets, the principal business corner of said City; that many trains cross said street on said tracks, and many long freight trains are slowly drawn across said street at grade; that said railroad intersects the first three named railroads in or adjacent to its crossing on said Hohman Street; that the corner of State and Hohman Street has been generally referred to as the principal business corner of the City; that the business is gradually work-

ing in all directions from said corner, and perhaps
76 chiefly to the south; that at the corner of Fayette Street and Hohman Street, is a five-story office and bank building; that at the southeast corner of Fayette Street and Hohman Street a nine-story office and bank building is now being constructed; that at the southeast corner of Russell Street and Hohman Street, an eight story office building is now being constructed, and that these buildings are and will be the principal office buildings of said City.

Affiants further say that on the accompanying map, which is made a part hereof, and marked "Exhibit A", the parts of streets upon which the plaintiff is forbidden to move its motor busses are indicated in blue; that other streets in the business district of the City are indicated thereon in red; that the streets or parts of streets upon which plaintiff has been tendered the privilege of operating its motor business, that is to stop to receive and discharge passengers in said City, are marked on said map in green.

Affiant further says that the traffic congestion problem in the City of Hammond has become a serious one and difficult to handle and control; that the vehicular traffic on the streets in and adjacent to said business district is very heavy; that for several years jitneys were operating thereon, consisting chiefly of small touring cars, several hundred in number, which badly congested the streets, and particularly because of their stopping to load and unload passengers, they caused delay to other traffic, and by ordinance of the City, said
77 jitney business was finally eliminated, and thereby the congestion somewhat reduced; that about said time a franchise contract was entered into between the City and Calumet Motor Coach Company for the operation of motor busses on the streets of Hammond, and said motor coaches supplanted and took the place of said jitneys, very much to the relief of congestion and the general satisfaction and convenience of the public; that within the past six or eight months, a large number of other motor busses have been introduced into the City and its environs; that none of said motor busses, and this includes those operated by the plaintiff, have any franchise or contract of any kind with the City; that they run to and fro, and particularly through the congested business district, at times that suit their pleasure and convenience, and have added greatly to the congestion and confusion; that it is nothing uncommon for vehicular

traffic to be held up with a solid line of cars extending as much as three blocks, in the heart of the business district; that such delay is caused in part by the motor busses operated by the plaintiff herein, and to a large extent by the movement of railroad trains across said streets, as hereinbefore mentioned, and in part by the narrowness and congestion of the streets generally; that immediately to the west of said City of Hammond is a city known as Calumet City in the State of Illinois; that one street, to-wit: State Line Street is a dividing street between said states and cities, the state line being approximately in the middle thereof.

78 Affiant further says that the plaintiff, and other operators of motor busses having no franchise or contract with the City, run many motor busses from said Calumet City into and through the business district of the City of Hammond to and from points in Indiana and Illinois; that some of said busses are engaged in interstate commerce, and others wholly in intrastate commerce; that the said City Council of said City did, on May 22nd, 1925, pass Ordinance No. 1945 designed to control and regulate vehicular traffic conducted for hire in said City; that said Ordinance became effective on the 9th day of June, 1925, and is now in full force and effect.

Affiants expressly deny the allegation in said sworn Bill of Complaint to the effect that the highways over which it operates its motor busses are not unduly congested, and expressly affirm that they are greatly congested; that such congestion has reached the point where agitation is going on, and in some cases has been crystallized into action for the widening of certain streets; that State Street west of Hohman Street is in process of widening, insofar as local proceedings are concerned, for a space of twenty-eight (28) feet; that said street east of Oakley Avenue is in process of widening for a space of twenty feet; that Hohman Street south of Russell Street is in process of widening, in a physical sense, for a space of twenty feet; that tentative plans are under way for the widening of Hohman Street from State Street to Russell Street for a space of twenty feet; that

79 all of said enterprises entail great expense and cost to the City and the property owners; that plaintiff insists upon operating its motor busses on Sibley Street east and west of Hohman Street, and on all other streets that are greatly congested, as aforesaid; that the streets named in

Section 1 of said Ordinance are improved and paved by special assessment and not in whole or in part by federal act.

Affiants further say that on Monday, June 8th, 1925, the President of the plaintiff company appeared before the Board of Public Works of the City of Hammond, and asked for a permit to operate motor busses under the provisions of Section 2 of said Ordinance No. 1945, and expressly requested that it be permitted to operate its said busses on Sibley Street west of the tracks of the Chicago, Indianapolis & Louisville Railway, which is entirely forbidden by said Ordinance; that said matter was postponed until Friday, June 12th, 1925, at the request of the said plaintiff, on account of the inability of its attorney to be present on Monday, June 8th, and affiants did, as the Board of Public Works of said City, postpone said matter, at the request of said plaintiff, and not otherwise; that on Friday, June 12th, the President of said Company, and other representatives thereof, appeared before the Board of Public Works, of which affiants are members, as aforesaid, and again renewed their request made on June 8th; that on said June 12th, 1925, affiants offered to pass
80 a resolution and tender to the plaintiff and also the Red Line Company, the privilege of bringing its motor busses from Chicago Heights, Lansing, Illinois, and Munster, Indiana, referred to in plaintiff's complaint, into said City, on Hohman Street north to Standard Avenue; thence west to State Line Street, a distance of two blocks; thence north on State Line Street for a distance of about a mile and a half, to Rimbach Avenue; thence east on Rimbach Avenue to Ann Street; thence south on Ann Street to Russell Street; thence west on Russell Street to State Line Street, and thence south by a reverse route, and to receive and discharge passengers throughout the route and return on State Line Street, and to stop and receive passengers throughout said route, all of which is indicated in green on the accompanying map aforesaid; that affiants' offered said permit for the period of one month, and offered to renew the same for longer periods if the operation proved to be satisfactory to all concerned, at which affiants stated to the representatives of the plaintiff company that affiants thought that one month was sufficient to test out the matter, and see whether such operation was feasible, all of which was unconditionally refused by the plaintiff.

Affiants further say that said route so tendered the plaintiff

would be able to receive and discharge passengers within a short block of the Courthouse, and in site thereof, within
81 one short block, and in sight of the Mee Hotel, one of the principal hotels in the City, and also within a like distance of the corner of Fayette Street and Hohman Street, hereinabove referred to, upon which two of the largest office buildings are located, and within one short block of the largest department stores of the City, and immediately in front of one of the largest and most popular theatres of the City, and within three blocks of the corner of State and Hohman Streets, hereinabove mentioned, and in close and convenient proximity to practically all of the business part of the City, located west of the tracks of the three railroads hereinbefore mentioned that intersect the business district on contiguous rights of way; that said route and any part thereof is open to the plaintiff to use and operate its motor busses, under the proposed permit at any time that it seems fit to accept the same; that by diverting said busses to Standard Avenue and State Line Street at the point which affiants propose and offer to divert the same, said cars are kept off the congested part of Hohman Street, upon which a street car line and many motor coaches operate under a franchise with the City of Hammond; that State Line Street is a wide, well-paved street, and ample for the purpose of operating all the service of the plaintiff herein, without undue congestion and without interference or competition of any other bus or transportation line.

Affiants deny that the plaintiff herein has a terminal in any sense on private property on Sibley Street between
82 Hohman Street and the tracks of the Chicago, Indianapolis & Louisville Railway; that heretofore, it is true, that the plaintiff has been stopping its busses in the street in front of a candy store, marked about six rods from Hohman Street east on Sibley Street, and that said candy store has been used as a waiting room for plaintiff's passengers, but that the passengers baggage and merchandise have been loaded on the busses always on the street; that plaintiff has had no contract with the City so to do; that said part of Sibley Street between Hohman Street and the tracks of the Chicago, Indianapolis & Louisville Railway, where said so-called private terminal has been located, is perhaps the worst congested street in the City of Hammond; that a double track street car line is located thereon, and that many taxi-

cabs and other carriers use the same in the vicinity of the depot of said railroad company, and many other persons in private conveyances use said street when waiting for trains at said station, and the congestion, confusion and delay in said particular blocks is one of the worst, if not the worst, in the City; that said delay is caused largely by the fact that when street cars are parked in said street, waiting for their time for departure, plaintiff's busses and other affiliated companies have been stopped in said street parallel to and near to said street cars, in such a way as to prevent any vehicle from moving in said street in an easterly direction; that plaintiff's busses are usually parked at angles and not parallel to the curb, and in such a way as to
83 make unnecessary and undue intrusion on the traveled way in said street; that said busses are large and cumbersome, and occupy more than the room used by ordinary traffic, or other vehicles passing to and fro on said street through said point; that plaintiff has no private terminal in the sense that it receives and discharges passengers on private ground.

Affiants deny that said Ordinance aims to destroy the business of the plaintiff, to render its investment worthless, and to destroy competition, and affiants say that the interested business of the plaintiff herein is in no sense competitive with that of any company or concern to affiants' knowledge.

Affiants deny that the plaintiff will be forced to discontinue its service into the City of Hammond if said ordinance is enforced and said permit is accepted, and on the contrary, if plaintiff is given the freedom of certain streets, which are in close proximity with the heart of the city, while, at the same time, they are kept out of the worst congested portion.

Affiants attach hereto, make a part hereof, and mark "Exhibit B" a copy of the proposed permit which they tendered to the plaintiff on June 12th, 1925.

Affiants further say that, as they are informed and believe, one Charles W. Chase, who, as they are informed, is the President of the plaintiff company; that he is also President of the Gary Street Railway Company, and other corporations engaged in certain forms of transportation
84 service outside of the City of Hammond; that they are informed and believe that said Charles W. Chase owns the controlling interest, if not all the stock, in the plaintiff company, and that he purchased the same long after said

Ordinance No. 1945 was adopted, and with full knowledge of its existence; that in fact, he purchased said stock and the controlling interest of said corporation very shortly before he appeared before the Board of Public Works of the City of Hammond, on June 8th, 1925.

J. V. KEELER (signed)
F. C. DIETRICH (signed)

Subscribed and sworn to before me this 15th day of June, 1925.

DELLA MILLER (signed)
Notary Public

(Notary Seal)

My commission expires June 8, 1926.

MAPS

TOO

LARGE

FOR

FILMING

The Foregoing Statement of the Evidence was Lodged in the Clerk's Office for Filing This 16th day of July, 1925.

MAUDE B. SWANK
Deputy Clerk

The foregoing statement of the evidence is approved and ordered filed, to be embodied as part of the record for the purposes of appeal.

THOS. W. SLICK
Judge of the United States District Court.

Dated: July 17th, 1925.

106 IN THE DISTRICT COURT OF THE UNITED STATES

For the District of Indiana

Farina Bus Line and Transportation Company, a corporation, *Plaintiff*, *vs.* City of Hammond, a municipal corporation.	No. 26 In Equity

The plaintiff in the above entitled cause having filed in the office of the Clerk of the District Court, a statement and transcript of the evidence, and the defendant through its solicitors having examined the same, hereby waives that provision in Rule 75 of the Equity Rules that such statement shall be lodged in the office of the Clerk for a period of ten (10) days, and consent to the approval of such statement of the evidence by the Judge of the District Court and the filing thereof in the Clerk's office, to be embodied as a part of the record for the purposes of appeal.

BOMBERGER, PETERS & MORTHLAND,
Attorneys for Defendant

Dated July 16th, A. D. 1925.

(Endorsed) Filed Jul 17 1925 William P. Kappes, Clerk.

107 Be It Further Remembered that afterwards, to-wit: At the said July Term of said Court, on the 17th day of July, A. D. 1925, before the Honorable Thomas W. Slick, Judge of the United States District Court for the District of Indiana, the following proceedings were had, to-wit:

ed July 1925.

Farina Bus Line and Transportation Company
vs.
City of Hammond
} No. 26 In Equity

Comes now the plaintiff by Crumpacker and Friedrich of counsel, and submits to the Court its statement of the evidence herein, which statement is now approved and ordered filed, to be embodied as part of the record for the purposes of appeal.

19 Thereupon the cause is submitted upon the issues so joined; and by agreement of the parties, the evidence taken at the hearing upon the application for a temporary injunction in this cause, is now considered as evidence taken upon the final hearing of this cause; and the court having considered said evidence and other additional evidence offered at this time, and being duly advised in the premises now finds against the plaintiff and for the defendant, that the temporary restraining order issued in this cause on the twelfth day of June, 1925, should be dissolved, and that the plaintiff take nothing by its bill of complaint, to which findings of the court the plaintiff at the time duly excepted.

It Is Accordingly Ordered, Adjudged and Decreed that the said temporary restraining order so issued on the twelfth day of June, 1925 be, and the same is hereby dissolved; that the plaintiff take nothing by its complaint; that no injunction shall issue enjoining the defendant from enforcing Ordinance No. 1945 passed by the defendant City, as described in the complaint and as prayed for therein, and that the defendant have and recover its costs herein laid out and expended.

Thereupon the plaintiff in open court gives notice of an appeal from said judgment and decree of this court, to the United States Circuit Court of Appeals, and at the same time, in open court files its assignment of errors, which assignment omitting formal parts is in the following words and figures, to-wit:

20 Now comes the plaintiff in the above entitled cause, and files the following assignment of errors upon which it will rely upon its prosecution of the appeal in the above entitled cause, from the decree made by this honorable court on the 10th day of July, 1925.

1.

Filed Ju
1925.

That the United States District Court for the District of Indiana, erred in refusing to enjoin the enforcement of the city ordinance set out at length in the complaint in this action, being ordinance No. 1945 of the ordinances of the defendant city, notwithstanding said ordinance is invalid as an unlawful delegation of legislative powers to the board of public works of the defendant city, in this,—that under section two of said ordinance the board of public works is given the power to grant permits for the operation of motor vehicles carrying passengers for hire upon certain streets of the defendant city, therein named.

The ordinance as an unlawful delegation of legislative power, is in contravention of Article IV Section 1 of the Constitution of the State of Indiana.

As such unlawful delegation of legislative powers, it gives the board of public works the uncontrolled discretion to deny the plaintiff as an interstate carrier of passengers for hire, permission to operate its bus lines on the streets of the defendant city, and thereby imposes an undue burden upon interstate commerce, in contravention ogf Article I, Section 8 of the Constitution of the United States.

21 As an unlawful delegation of legislative authority, it gives the board of public works the uncontrolled discretion to deny the plaintiff the right to operate its bus lines upon the streets of the defendant city and thereby deprives the plaintiff of its property without due process of law, in contravention of Section 1, Article XIV of the Amendments to the Constitution of the United States.

2.

The United States District Court for the District of Indiana erred in refusing to enjoin the enforcement of the ordinance set out at length in the complaint in this action, being ordinance No. 1945 of the ordinances of the defendant city, notwithstanding said ordinance is unconstitutional and void, for indefiniteness and uncertainty, and notwithstanding it does not declare or set up the standard or conditions which shall govern the board of public works in exercising the power delegated to such board, and because it permits the board to exercise an arbitrary and uncontrolled discretion in the grant-

ing of permits. It contravenes Article IV Section 1 of the Constitution of the State of Indiana. It permits of the imposition of an undue burden on interstate commerce, in contravention of Article I Section 8 of the United States Constitution. It permits the board of works to arbitrarily deny the plaintiff permission to operate its bus lines upon the streets of the defendant city and thereby deprives it of its property without due process of law, in contravention of Article XIV Section 1 of the Amendments to the Constitution of the United States.

22 The other portions of the ordinance are so mutually connected with and dependent upon the invalid portion in section two thereof, that the entire ordinance is invalid.

3.

The United States District Court for the District of Indiana, erred in refusing to enjoin the enforcement of the ordinance set out at length in the complaint in this action, being ordinance No. 1945 of the ordinances of the defendant city, notwithstanding said ordinance is void because in excess of the powers of the defendant city, in the following respect:

The control of the operation of motor vehicles transporting passengers for hire upon highways, including streets within the limits of municipal corporations in the State of Indiana, is exclusively in the Public Service Commission of the state, by virtue of the Act of the General Assembly of said state, approved March 4th, 1925, and acts to which said act is supplemental. Section five of said Act of March 4th, 1925, provides that in any city or town of the state where motor transportation is furnished under or by color of a contract, and in cities or towns contiguous thereto, the board of public works, common council or board of trustees, as the case may be, shall continue to supervise, control and regulate such service and to determine when if at all, for public convenience and necessity, competing service shall be established. The proviso exempting such cities from control by the Public Service Commission is invalid, because it creates an arbi-

23 trary classification of cities and towns not bearing any reasonable or just relation to the act in respect to which the classification is proposed.

The proviso makes the cities and towns affected thereby the subjects of local and special legislation, in contravention

of sections 22 and 23, Article IV of the Constitution of the State of Indiana.

It is discriminatory and does not apply equally to all cities and towns naturally falling within the same class, in contravention of Article XIV Section 1 of the Constitution of the United States.

The proviso is divisible from the remaining sections of the Act and, being illegal and void, the Public Service Commission has exclusive control of motor transportation in the city of Hammond, and Ordinance No. 1945 passed by the defendant city is in excess of its powers.

4.

The United States District Court for the District of Indiana erred in refusing to enjoin the enforcement of the ordinance set out at length in the complaint in this action, being ordinance No. 1945 of the ordinances of the defendant city, notwithstanding its enforcement against the plaintiff and not against the Calumet Motor Coach Company, is discriminatory and grants to the Calumet Motor Coach Company privileges and immunities which, upon the same terms, are not granted to the plaintiff, in contravention of Section 23, Article I
24 of the Constitution of the State of Indiana. Its enforcement against the plaintiff and not against the Calumet Motor Coach Company, a company engaged in like business with the plaintiff upon the streets of said city, denies to plaintiff equal protection of the laws, and deprives it of property without due process of law, in contravention of Section 1, Article XIV of the United States Constitution.

The ordinance excludes motor vehicles transporting passengers for hire, entirely from the streets of the city named in section one. It deprives such carriers of the right to stop to receive or discharge passengers on any streets of the city, except under permits granted by the board of works on certain streets named in section two. The third section provides that the ordinance shall not be construed to impair the obligation of any contract to which the city is a party. The city is a party to an alleged franchise contract with the Calumet Motor Coach Company. Notwithstanding this company is transporting passengers for hire upon the streets of the city, engaged in like business with the plaintiff and operating similar vehicles under similar conditions, the city attempts to enforce the ordinance against the plaintiff and not against

the Calumet Motor Coach Company. This is an unlawful discrimination against the plaintiff and renders the ordinance invalid and unconstitutional, and in particular in contravention of the sections of the state and federal constitutions above referred to.

25 5.

The United States District Court for the District of Indiana, erred in refusing to enjoin the enforcement of the ordinance set out at length in the complaint in this action, being Ordinance No. 1945 of the defendant city, notwithstanding said ordinance is unconstitutional in that it prohibits the operation of the plaintiff's motor bus lines from cities and towns in the state of Illinois into the defendant city in the state of Indiana. The business in which the plaintiff is engaged is interstate commerce, and the ordinance prohibits such business within the defendant city, in contravention of Section 8, Article I of the Constitution of the United States.

6.

The United States District Court for the District of Indiana, erred in refusing to enjoin the enforcement of the ordinance set out at length in the complaint in this action being ordinance No. 1945 of the defendant city, notwithstanding said ordinance imposes and unreasonable and an undue burden upon interstate commerce, in this,—that the plaintiff is engaged in carrying passengers for hire by motor bus, from cities and towns in the State of Illinois, into the defendant city in the state of Indiana. It is not engaged in local hauls within the limits of the defendant city. Section One of the ordinance excludes the plaintiff's busses entirely from certain streets named therein. Section two of the ordinance
26 prevents the plaintiff from stopping to receive or discharge passengers on any street, alley or public place in the defendant city. From the nature of the plaintiff's business, it must stop to receive or discharge passengers, and the restrictions and conditions of the ordinance make it an unwarranted interference with interstate commerce, in contravention of the interstate commerce clause of the United States Constitution.

7.

The United States District Court for the District of Indiana, erred in refusing to enjoin the enforcement of the ordinance set out at length in the complaint in this action, being ordinance No. 1945 of the defendant city, notwithstanding said ordinance is invalid as in excess of the powers of the defendant city, in this,—that under the laws of the State of Indiana, the extent of the city's power is to adopt reasonable regulations governing motor bus transportation within its limits, and the ordinance in question is an unreasonable regulation of such transportation. It prevents the plaintiff and other transportation companies from stopping to receive or discharge passengers on any of the streets of the city, notwithstanding there are many streets in the city upon which there is no congestion and no reasonable necessity for excluding motor transportation to provide for the public safety or welfare. The ordinance is not therefore, a proper exercise of the police powers of the defendant city.

27

8.

The United States District Court for the District of Indiana, erred in refusing to enjoin the enforcement of the city ordinance set out at length in the complaint in this action, being ordinance No. 1945 of the defendant city, notwithstanding the ordinance is discriminatory in this respect,—The defendant enforces the ordinance against the plaintiff, but not against the Calumet Motor Coach Company. It takes the position that the latter company is operating under a franchise contract with the defendant city, which would be impaired if the ordinance were enforced against that company. The defendant city did not and does not have the power under the laws of the State of Indiana, to grant franchises for the operation of motor vehicles for hire upon its streets. Notwithstanding the city has no such power, it assumed to exercise the same and grant a franchise contract to said Calumet Motor Coach Company, and declines to enforce said ordinance No. 1945 against said company. The ordinance is thereby discriminatory, in contravention of Section 23, Article of the Constitution of the State of Indiana. It denies to the plaintiff equal protection of the laws, and deprives it of its property without due process of law, in contravention of Section 1 Article XIV of the Constitution of the United States.

9.

The United States District Court for the District of Indiana, erred in entering its findings and judgment in favor of the defendant and against the plaintiff in this
28 cause, thereby declining to enjoin the enforcement of ordinance No. 1945 of the city, set out at length in the complaint in this action, notwithstanding said ordinance is unconstitutional and void,

(1) as an unlawful delegation of legislative powers to an administrative board;

(2) as an unlawful delegation of legislative powers to the arbitrary and uncontrolled discretion of an administrative board without declaring or setting up the standards or conditions to govern that board in the exercise of such powers;

(3) as in excess of the powers of the defendant city;

(4) as imposing undue burdens on interstate commerce;

(5) as an arbitrary, unreasonable and improper exercise of the police powers of the defendant city;

(6) as discriminatory against the plaintiff, thereby denying to it equal protection of the laws and depriving it of its property without due process of law;

all in contravention of the Constitution of the State of Indiana and the Constitution of the United States and the amendments thereto.

Wherefore, the appellant prays that said judgment and decree be reversed and that said District Court for the District of Indiana, be ordered to enter a decree in favor of the plaintiff in the above entitled cause.

(signed) CRUMPACKER & FRIEDRICH
Attorneys for Appellant

29 And the plaintiff prays the court to allow said appeal, and the court grants said prayer and allows said appeal upon the filing within the term, of an appeal bond in the sum of Five Hundred ($500.00) Dollars with the United States Fidelity and Guaranty Company as surety thereon. And the plaintiff now tenders its appeal bond in the penal sum, and with the surety, duly executed in accordance with the court's order and decree, which bond is now accepted by the court and placed on file.

(signed) THOMAS W. SLICK,
Judge.

Hammond, Indiana, July 10th, 1925.

Said Appeal Bond, omitting formal parts, is in the following words and figures, to-wit:

APPEAL BOND

Know All Men by These Presents, that we, Farina Bus Line and Transportation Company, a corporation, as principal, and United States Fidelity and Guaranty Company, a corporation, as surety, are held and firmly bound unto the City of Hammond, Lake County, Indiana, a municipal corporation, in the penal sum of Five Hundred ($500.00) Dollars, for the payment of which, well and truly to be made, we bind ourselves, our successors and assigns, firmly by these presents.

The Condition of the above obligation, is such that, Whereas, on the 10th day of July, 1925, in a suit pending in the District Court of the United States for the District of Indiana, entitled *Farina Bus Line and Transportation Company* v. *City of Hammond,* No. 26 in equity, judgment was rendered against said Farina Bus Line and Transportation Company, the principal in this bond, and from which said judgment said principal has appealed to the United States Circuit Court of Appeals for the Seventh Circuit;

Now if the Said Farina Bus Line and Transportation Company shall prosecute said appeal to effect, and answer all costs if it fail to make good its plea, then this obligation shall be void; otherwise to be and remain in full force and effect.

Sealed with our seals and dated the 10th day of July, 1925.

FARINA BUS LINE AND TRANSPORTATION COMPANY,
(signed) By FRED C. CRUMPACKER,
its Attorney and Agent

UNITED STATES FIDELITY AND GUARANTY COMPANY,
(signed) By H. J. GESCHEIDLER,
Resident Agent.

State of Indiana }
County of Lake } ss:

Personally appeared before me, a Notary Public in and for Lake County, Indiana, Fred C. Crumpacker, attorney for Farina Bus Line and Transportation Company, principal in the above and foregoing Appeal Bond, and acknowledged the execution of said bond for and on behalf of said Company, as his free and voluntary act and the free and voluntary act of said Company, for the uses and purposes therein stated.

Witness my hand and notarial seal the 10th day of
31 July, A. D. 1925.

(signed) MOLLIE KRIEGER
(Seal) *Notary Public*

My commission expires November 5, 1925.

State of Indiana }
County of Lake } ss:

Personally appeared before me, a Notary Public in and for Lake County, Indiana, Howard J. Gescheidler, Resident Agent for United States Fidelity and Guaranty Company, Surety in the above and foregoing Appeal Bond, and acknowledged the execution of said bond for and on behalf of said Company, as his free and voluntary act and the free and voluntary act of said Company, for the uses and purposes therein stated.

Witness my hand and notarial seal the 10th day of July, A. D. 1925.

(signed) MOLLIE KRIEGER
(Seal) *Notary Public*

My commission expires November 5, 1925.

(Attached to the original Appeal Bond is Power of Attorney to Howard J. Gescheidler, Resident Agent of the United States Fidelity & Guaranty Company, authorizing said agent to execute said Appeal Bond for the uses and purposes therein set forth.)

107 Said plaintiff now files also its praecipe for transcript of the proceedings and record in this cause, said praecipe, omitting formal parts, being in the words following, to-wit:

William P. Kappes, Clerk:

You are hereby requested to prepare a transcript of the proceedings in the above entitled cause, and to include therein all papers and pleadings filed and on file, all order book entries and rulings, the statement of the evidence, the final judgment and decree and all other papers, documents and records necessary to make a complete transcript of the
108 proceedings and record in said cause in your office, which papers, pleadings and orders so to be included in said transcript, are as follows, to-wit:

1. The Complaint.
2. The temporary restraining order.
3. Defendant's motion to dismiss.
4. The answer to the complaint.
5. The statement of the evidence, as approved by the Judge, and filed.
6. The final order and judgment in its entirety, including notice of appeal.
7. The assignment of errors.
8. The appeal bond.
9. Notice by plaintiff to defendant of lodgment of statement of evidence in the Clerk's office and of plaintiff's request to the court to approve the same, with defendant's waiver of the provision of Rule 75 of the Equity Rules that such statement shall be lodged ten (10) days in the Clerk's office.
10. Copy of this praecipe.

And you are requested to certify to said transcript to be used as the transcript of the record on appeal from the final judgment and decree in the above entitled cause, to the Circuit Court of Appeals of the United States, Seventh Circuit.

Dated this 16th day of July, A. D. 1925.

(signed) CRUMPACKER & FRIEDRICH,
Attorneys for Plaintiff

109 The undersigned attorneys for the defendant in the above cause, hereby acknowledge service of a copy of the foregoing praecipe this 16th day of July, A. D. 1925.

(signed) BOMBERGER, PETERS AND MORTHLAND
Attorneys for Defendant

110 United States of America } ss:
District of Indiana }

IN THE DISTRICT COURT OF THE UNITED STATES

For the District of Indiana

Farina Bus Line and Transportation Company
vs.
City of Hammond, a municipal corporation
} No. 26 In Equity

CLERK'S CERTIFICATE

I, William P. Kappes, Clerk of the District Court of the United States for the District of Indiana, do hereby certify that the above and foregoing is a full, true and complete transcript of the record, according to the above and foregoing praecipe, in the above entitled cause, as the same appears of record in my office.

Witness my hand and the Seal of said Court, this 31st day of July, A. D. 1925.

WILLIAM P. KAPPES,
Clerk.

(Seal)

By MAUDE B. SWANK,
Deputy Clerk

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 76, inclusive, contain a true copy of the Printed Record, printed under my supervision and filed September 16, 1925, on which the following entitled cause was heard and determined:

Farina Bus Line and Transportation Company, a corporation,

vs.

City of Hammond, Lake County, Indiana, a Municipal Corporation.

No. 3637, October Term, 1925, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this First day of April, A. D. 1926.

EDWARD M. HOLLOWAY,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the city of Chicago in said Seventh Circuit on the seventh day of October, 1924 of the October term in the year of our Lord one thousand nine hundred and twenty-four and of our Independence the one hundred and forty-ninth.

And afterwards, to wit: On the eighth day of August, 1925, there was filed in the office of the clerk of this court an appearance of counsel for appellant, which said appearance is in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit

No. 3637 October Term 1924

Farina Bus Line and Transportation Co.
Appellant

vs.

City of Hammond
Appellee

The Clerk will enter my appearance as Counsel for the Appellant.

F. C. CRUMPACKER
E. H. FRIEDRICH
#200 Hammond Bldg.,
Hammond, Indiana

Endorsed: Filed Aug. 8, 1925. Edward M. Holloway, Clerk.

And afterwards, to wit: On the nineteenth day of September, 1925, there was filed in the office of the clerk of this court an appearance of counsel for appellee, which said appearance is in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit

No. 3637 October Term 1924

Farine Bus Line & Trans. Company

vs.

City of Hammond

The Clerk will enter my appearance as Counsel for the Appellee.

L. L. BOMBERGER
Ruff Building
Hammond, Ind.

Endorsed: Filed Sept. 19, 1925. Edward M. Holloway, Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the city of Chicago in said Seventh Circuit on the sixth day of October, 1925, of the October Term in the year of our Lord one thousand nine hundred and twenty-five and of our Independence the one hundred and fiftieth.

And afterwards, to wit: On the twenty-fourth day of December, 1925, the following further proceedings were had and entered of record, to wit:

Thursday, December 24, 1925.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Albert B. Anderson, Circuit Judge.
Edward M. Holloway, Clerk.
Palmer E. Anderson, Marshal.

Farina Bus Line & Transportation Company
3637 *vs.*
City of Hammond, etc.

Appeal from the District Court of the United States for the District of Indiana.

It is ordered by the court that the time for filing reply brief for appellant in this cause be, and the same is hereby extended thirty (30) days from December 17, 1925.

It is further odered that this cause be, and the same is hereby set down for hearing on Tuesday, January 26, 1926.

And afterwards, to wit: On the twenty-sixth day of January, 1926, the following further proceedings were had and entered of record to wit:

Tuesday, January 26, 1926.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Hon. Albert B. Anderson, Circuit Judge.
Edward M. Holloway, Clerk.
Palmer E. Anderson, Marshal.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Hon. Albert B. Anderson, Circuit Judge.

Farina Bus Line, etc.
3637 *vs.*
City of Hammond, etc.

} Appeal from the District Court of the United States for the District of Indiana.

Now this day come the parties by their counsel, and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. F. C. Crumpacker, counsel for appellant, and by Mr. L. L. Bomberger, counsel for appellees, and the court having heard the same takes this matter under advisement.

And afterwards, to wit: On the twelfth day of March, 1926, there was filed in the office of the clerk of this court the opinion of the court, which said opinion is in the words and figures following, to wit:

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 3637. October Term, 1925, January Session, 1926.

Farina Bus Line and Transportation Company, a corporation, *Appellant*,
vs.
City of Hammond, Lake County, a Municipal Corporation, *Appellee.*

Appeal from the District Court of the United States for the District of Indiana.

(March 12, 1926)

Before EVANS, PAGE and ANDERSON, *Circuit Judges.*

By PAGE, *Cir. J.*

In so far as here material, the facts in this case are the same as in No. 3668, *Schappi Bus Line* v. *City of Hammond*, decided this date, and the discussion there applies equally to this case.

The decree is reversed, with directions to the District Court to enter a decree granting the injunction.

And on the same day, to wit: On the twelfth day of March, 1926, the following further proceedings were had and entered of record, to wit:

Friday, March 12, 1926.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. George T. Page, Circuit Judge.
Hon. Albert B. Anderson, Circuit Judge.
Edward M. Holloway, Clerk.
Palmer E. Anderson, Marshal.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Hon. Albert B. Anderson, Circuit Judge.

Farina Bus Line and Transportation Company, a corporation,
3637 *vs.*
City of Hammond, Lake County, Indiana, a Municipal Corporation

Appeal from the District Court of the United States for the District of Indiana.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Indiana and was argued by counsel.

On consideration whereof: It is now here ordered, adjudged and decreed by this court that the decree of the said District Court in this cause be, and the same is hereby reversed with costs; and that this cause be, and the same is hereby remanded to the said District Court with directions to enter a decree granting the injunction.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 79 to 84, inclusive, contain a true copy of the proceedings had and papers filed (except the briefs of counsel and petitions and orders extending time to file briefs) in the case of

Farina Bus Line and Transportation Company, a Corporation

vs.

City of Hammond, Lake County, Indiana, a Municipal Corporation

No. 3637, October Term, 1925, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this First day of April A. D. 1926.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(Seal)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 11, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4177)